BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2017040574

DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 16, 2017, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's grandmother represented claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUES

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

FACTUAL FINDINGS

1. Claimant was born in 2006. She is currently 11 years old. Her paternal grandmother is her legal guardian. Claimant's paternal grandmother now seeks services for claimant from ACRC under the Lanterman Act.

PSYCHOLOGICAL EVALUATION CONDUCTED BY ANDREA FRANCISCO, PSY.D.

2. ACRC retained Andrea Francisco, Psy.D., licensed Clinical Psychologist, to conduct a psychological evaluation of claimant and issue a report. Dr. Francisco conducted the evaluation on February 12, 2017. During the evaluation, she administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); the Autism Diagnostic Observation Scale, Second Edition (ADOS-2) Module 3; and the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3). She also observed claimant, interviewed her grandmother, and reviewed the claimant's education and mental health records.

3. Claimant lived with her parents and half-brother until she was two years of age. She then lived with her mother and maternal grandmother for a year, then with her father for two years because her mother reportedly could not care for her. Claimant moved in with her paternal grandmother when she was six years of age because her father could not care for her. Child Protective Services became involved when claimant was eight years of age, because her half-brother reportedly molested her. Claimant's biological mother reportedly petitioned for custody in 2016, and was denied.

4. Claimant is under the care of a therapist and a psychiatrist. She has prescriptions for daily Seroquel, Prozac, and Clonidine. Claimant's grandmother reported that there is a great change in her behavior when she does not take her medication as prescribed. Claimant has a history of frequent angry outbursts, and of being verbally and physically aggressive with others. Prior to being prescribed medications, she was

reported to have become violent seven or eight times per day. Claimant was hospitalized in 2016 due to aggressive behavior towards her grandmother.

5. Claimant is currently in the fifth grade in an Emotional Disturbance classroom. Her grandmother reported that claimant is doing well in class, but struggles with social interactions with other students.

6. Cognitive Assessment. Dr. Francisco administered the WISC-V to measure claimant's intellectual ability in the areas of Verbal Comprehension, Visual Spatial, Fluid Reasoning, Working Memory, Processing Speed, and Full Scale IQ. During the administration of the WISC-V, claimant talked out loud throughout each task, making comments such as "some are really tricky." During the vocabulary questions, she would, at times, express tangent thoughts, such as describing an experience or television show she had seen. She also became restless at times, needing to move in her chair, and getting up to touch objects around the room.

7. Claimant scored in the Low Average range in each of the tested areas, and had a Full Scale IQ score of 84, also Low Average. Dr. Francisco found that claimant did not meet the criteria for a diagnosis of Intellectual Disability.

8. Autism Spectrum Disorder Testing. Dr. Francisco administered the ADOS-2 Module 3 to evaluate claimant under the diagnostic criteria for Autism Spectrum Disorder set forth in the DSM-5, which she quoted in her written evaluation and, in relevant part states as follows:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history…:
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or making friends; to absence of interest in peers.

[¶] … [¶]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two to the following, currently or by history…:

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

[¶] … [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies later in life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay….

9. The ADOS-2 Module 3 is a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials. Administration consists of a series of planned social occasions in which a behavior of a particular type is likely to occur. During the administration, Dr. Francisco presented numerous opportunities for claimant to exhibit communicative behaviors and social interest. Dr. Francisco found that claimant did not meet any the criteria for a diagnosis of Autism Spectrum Disorder. She found that claimant demonstrated appropriate eye contact, facial expressions, gestures, and engaged in conversation and play during the examination. Claimant did not demonstrate stereotyped speech, stereotyped motor mannerisms, rigid routines, or unusual interest in sensory aspects of her environment.

10. DSM-5 Diagnosis and Impressions. Dr. Francisco diagnosed claimant with Disruptive Mood Dysregulation Disorder (DSM-5 296.99). She also found that Post Traumatic Stress Disorder (PTSD) and Attention Deficit and Hyperactivity Disorder (ADHD) must be ruled out. Dr. Francisco specifically found that claimant did not meet the criteria for a diagnosis of Intellectual Disability or Autism Spectrum Disorder.

11. Vineland Adaptive Behavior Scales. Claimant's grandmother completed the Vineland-3 through an interview with Dr. Francisco. Interview questions are in the categories of Communication, Daily Living Skills, Socialization, and Motor Skills. The

interview questions are scored and compiled into an Adaptive Behavior Composite score. Claimant's grandmother reported during the interview that claimant uses her own knowledge to comment on things, tells about every day experiences in detail, can give complex directions involving three or more steps, writes emails and stories at least 10 sentences long, uses the Internet to find information, likes to cook and bake and is able to cut food with a knife, and takes medication as directed on her own. Claimant's grandmother also reported her concern that claimant does not clean herself properly when toileting, that she is overly familiar with strangers in public, and has difficulty maintaining friendships with her peers. Based on the interview responses, claimant's Adaptive Behavior Composite was a standard score of 76, which is in the moderately low range.

EARLIER ASSESSMENTS AND EVALUATIONS OF CLAIMANT

12. Psychoeducational Evaluation. In January 2015, Ronda Last, M.S., a School Psychologist employed by the Natomas Unified School District, conducted a Psychoeducational Evaluation of claimant at her grandmother's request. Claimant's grandmother had significant concerns about her behaviors and frustration with math. At the time, claimant was eight years and nine months old, and in the third grade. Ms. Last conducted her assessment by using the following methods: observations of behavior; Woodcock Johnson Test of Cognitive Abilities-Fourth Edition (WJ-IV); and other tests described below.

13. Ms. Last observed claimant in a classroom setting using the Student On-Task Observation method. Observations measured the rate of actively and passively engaged behaviors, as well as off-task behaviors. Claimant's behavior was compared to the behavior of a randomly selected peer during the same observation period. Claimant showed weaknesses with her on task behavior and struggled to stay focused in the

classroom. She frequently attempted to talk with the examiner, and needed constant teacher support and guidance with her work.

14. Ms. Last administered the WJ-IV, which is designed to assess both general and specific cognitive abilities and functioning. The assessment of General Intellectual Ability (GIA) includes a battery of tests which are used to form the GIA. The standard scores have a range of 1 to 200, with a median of 100. Claimant achieved a GIA score of 68, which falls within the Very Low range of scores. This suggests she has difficulty with her global intelligence, including oral vocabulary, number series, verbal attention, letter-pattern matching, phonological processing, story recall, and visualization.

15. The Test of Visual Perceptual Skills-Third Edition, measures a student's ability to organize and interpret information that the student sees and gives it meaning. Visual perceptual processing impacts a student's ability to learn. Without accurate visual perceptual processing, a student will have difficulty learning to read, give or follow directions, copy from the whiteboard, and other tasks. In the assessment administered by Ms. Last, claimant demonstrated poor skills with her complex visual perceptual skills. Commensurate with her WJ-IV scores, claimant demonstrated significant visual processing and visual memory weaknesses.

16. The Comprehensive Test of Phonological Processing-Second Edition, was administered to assess phonological processing abilities and the acquisition of word-level reading skills. Phonological processing refers to the use of information including the sound structure of one's oral language, in the mental processing of written language. In the assessment administered by Ms. Last, claimant's ability to use the sound structure of language and to know the corresponding letters was measured in the poor range. Claimant's ability to remember the relationship between letters and sounds was measured in the average range. Claimant's ability to read fluently was in the average range.

17. Ms. Last administered the Bender Visual Motor Gestalt Test-II (BG II) to assess claimant's visual motor integration skills. The BG II requires the reproduction of designs and involves fine-motor development, perceptual discrimination ability, the ability to integrate perceptual and motor processes, and the ability to shift attention between the original design and the design that is being drawn. Claimant achieved a standard score in the average range.

18. Psychological Evaluation and Testing Report. Paul Reiser, Ph.D., conducted a psychological evaluation of claimant pursuant to an evaluation under Welfare & Institutions Code section 5150, and issued his report on May 6, 2016. Claimant had been placed in the hospital on April 28, 2016, at the request of Kaiser-Sacramento, after claimant became physically abusive and out-of-control during a psychiatric appointment. Dr. Reiser administered a series of tests, discussed below.

19. Dr. Reiser administered the Wechsler Intelligence Scale for Children-Fifth Edition, which contains 10 problem-solving sub-tests, with possible scores ranging from 1 to 19 on each sub-test. The aggregate score is then converted to a Full Scale IQ. By this measure, claimant's Full Scale IQ was 64, which is categorized as deficient, in the first percentile. Dr. Reiser noted that claimant had a scaled score of 2 and 1, respectively, on the first two sub-tests, and that she had scores of 5, 6, or 7 on the remaining eight sub-tests. He attributed the low scores on the first two sub-tests to claimant's emotional lability during the early part of the exam. Assuming that claimant's scores on the first two sub-tests would have been in the same range as on the other sub-tests, in the absence of her emotional lability during the examination, Dr. Reiser would estimate her actual Full Scale IQ at approximately 70, which is at the bottom of the borderline range.

20. Dr. Reiser administered several tests providing index scores. On the Visual Spatial Index, claimant scored in the deficient range, in the first percentile. On the Verbal Comprehension Index, claimant scored in the deficient range in the first percentile. On

the Fluid Reasoning Index, relying on pattern recognition and analytical reasoning, claimant scored in the borderline range in the fifth percentile. On the Digit Span, measuring the ability to repeat increasingly-longer strings of numbers forwards, backwards and in sequential order, as a reflection of attention span, claimant finished at the top of the borderline range in the eighth percentile. On the Processing Speed Index, which tests processing visual information on clerical-like tasks, claimant scored in the borderline range in the third percentile. Thus, three of the index scores were in the borderline range, and two index scores were in the deficient range.

21. Dr. Reiser administered the Bender Visual-Motor Gestalt Test, which required claimant to copy nine geometric shapes on a piece of blank paper. Claimant's replications were extremely inaccurate. She had difficulty drawing angles and getting lines to join or intersect at the proper junctures. The two most likely causes of this degree of ineffectiveness are brain dysfunction and psychosis.

22. The Peabody Picture Vocabulary Test-4 requires the examinee to correlate pictures and words. Claimant scored in the low average range. Dr. Reiser noted that this score is often higher than the Full Scale IQ due to its narrow skill range.

23. Tracking in the verbal channel was sampled with the Sentence Repetition Test, where claimant was asked to repeat increasingly longer sentences. Claimant earned a borderline score, which is the same as her score on the Digit Span subtest, where she was asked to repeat increasingly longer strings of numbers.

24. Tracking in the visual channel was measured with Part A of the Trail Making Test, where claimant was asked to draw a line to connect randomly-scattered numbers on a piece of paper in ascending order. Claimant performed in the average range. Dr. Reiser noted that complainant tended to do okay on short tasks when she focused on them, and that problems with behavior or emotional lability occurred in between tasks or when a task went too long for her.

25. Arithmetic skills were measured with a Math Computation subtest. Claimant finished with a score of low average, approximately one and a half years behind her grade level.

26. Fluency with words was observed on the Controlled Oral Word Association Test, where claimant was asked to state words for specific letters in 60-second intervals. Claimant scored low for her age, but consistent with her demonstrated aptitude.

27. Dr. Reiser commented on the variability of claimant's scores, ranging from deficient to low average. He noted there are two ways to interpret the pattern: (1) the scatter as indicating multiple learning disabilities, or (2) the poor performances on the sophisticated measures suggesting a pervasive developmental disorder. Dr. Reiser is inclined to lean toward the second possibility, with the caveat that claimant's extreme emotional lability suppressed some scores which would lead to a conclusion that the first possibility is more likely.

28. Dr. Reiser measured claimant's emotional functioning with a series of self-report inventories, where claimant was asked to assign features or qualities to herself, and projective instruments, where claimant was asked to assign meaning to pictures or tell stories of things or scenes. The self-report inventories included the Revised Children's Manifest Anxiety Scale-2; the Children's Depression Inventory-2; the Self-Concept Scale for Children-2; and the Life Events Checklist. The projective instruments included the Projective Figure Drawing Task and the Roberts Apperception Task. Taken as a whole, Dr. Reiser commented that the most conspicuous aspect of claimant's demeanor was her impulsivity, restlessness, and volatility. Claimant's behavior indicates possible ADHD, or if there is no early history of same, brain dysfunction which results in behaviors that resemble ADHD.

TESTIMONY

29. Scott Totin, MFT. Mr. Totin is claimant's therapist. One of his more significant concerns for claimant is that she has very poor social boundaries, which will cause her to engage in inappropriate and potentially unsafe conduct, such as approaching strangers. For example, she has run away from home to the local grocery store and initiated conversations with strangers.

30. Mr. Totin is not a psychologist, and is not professionally qualified to administer psychological testing. He noted the difference between the Full Scale IQ of 84, and the scores of 64 and 68 reported by Dr. Reiser and Ms. Last, respectively. Given his professional qualifications and scope of practice, he cannot offer any opinion regarding the significance of those differences, or whether one score provides a more accurate assessment of claimant than the other scores.

31. Claimant's Paternal Grandmother. Claimant's grandmother is concerned that claimant cannot take appropriate care of herself, and that she has difficulty with certain subjects in school. For example, she cannot get ready for school without extreme prompting to brush her teeth, etc. She needs to be escorted to the school bus, and needs adult supervision to take her to the restroom. Also, personal care is a problem because she does not clean and wipe herself appropriately without prompting.

DISCUSSION

Based on the testimony of Mr. Totin and claimant's grandmother, it is clear that claimant has substantial difficulties with self-care, learning, self-direction, and the capacity for age appropriate independence. It is possible that claimant's challenges are attributable to an intellectual disability or a condition closely related to intellectual disability, however the evidence presented does not support definitive findings on this point. There was no interpretive testimony regarding the psychological testing, and thus

no way to definitively determine the significance and weight to be given to the various tests. Most importantly, no testimony was provided regarding the relative significance of the cognitive testing administered by Dr. Francisco, Dr. Reiser, and Ms. Last, which resulted in separate IQ scores of 84, 64, and 68. In the absence of interpretive testimony, it is not possible, based on the evidence presented, to make any determination whether one of these scores provides a more accurate assessment of claimant's cognitive abilities than the other scores. For the same reason, it is not possible to determine, based on the evidence presented, whether claimant has a condition closely related to an intellectual disability. Also, the evidence presented does not support any finding as to whether the treatments necessary for claimant are similar to the treatments that would be necessary to treat an intellectual disability.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, regional centers provide services to individuals with developmental disabilities. As defined in Welfare and Institutions Code section 4512, subdivision (a), a "developmental disability" is:

> a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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 an intellectual disability, but

shall not include other handicapping conditions that are solely physical in nature.

2. Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

3. No evidence was presented to establish that claimant had cerebral palsy or epilepsy, and there is no contention that she has either condition. The evidence presented regarding the possibility of autism, primarily the evaluation performed by Dr. Francisco, tends to rule out this condition. Taken as a whole, the evidence does not establish that claimant has an intellectual disability. The evidence regarding the cognitive testing performed by Dr. Francisco, Dr. Reiser, and Ms. Last is not, standing alone without interpretive testimony, sufficient to support a determination that claimant has an intellectual disability or a condition closely related to an intellectual disability. Similarly, the evidence presented does not support a determination that claimant has a condition requiring treatment similar to that required for individuals with an intellectual disability. Consequently, the evidence does not establish that claimant has a developmental disability within the meaning of the Lanterman Act, and she is therefore not eligible to receive services through ACRC.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATED: May 30, 2017

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TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)