BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. FRANK D. LANTERMAN REGIONAL CENTER, Service Agency.	OAH No. 2017060586

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 23, 2017, in Los Angeles.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant's grandmother represented claimant, who was present.[1]

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 23, 2017.

ISSUE

Whether claimant is eligible to receive services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

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[1] Family and party titles are used to protect the privacy of claimant and his family.

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EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 10.

Testimony: Kathy Khoie, Ph.D.; Yadira Navarro, Ph.D.; Maria Tapia-Montes; claimant's grandmother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is an 18-year-old man.

2. Claimant's grandmother requested that the Service Agency consider providing services and supports for her grandson. On May 10, 2017, the Service Agency's eligibility team determined that claimant was not eligible for regional center services. By a letter dated May 11, 2017, Maria Tapia-Montes, Intake Specialist, and Hasmig G. Mandossian, Assistant Director, Intake, notified claimant's grandmother that the Service Agency determined that claimant has a Social Communication Disorder but does not have a developmental disability under the Lanterman Act.[2]

3. On June 1, 2017, claimant's grandmother filed a fair hearing request to appeal the Service Agency's determination of ineligibility.

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[2] The NOPA letter related that, to be eligible under the Lanterman Act, an individual must have one of five specified categories of developmental disability, i.e., autism, intellectual disability, cerebral palsy, epilepsy, and "other conditions similar to intellectual disability that require treatment similar to that required by intellectually disabled individuals," citing Welfare and Institutions Code section 4512. (Ex. 2.) In the NOPA letter, Ms. Tapia-Montes recommended that claimant continue to receive mental health services.

CLAIMANT'S BACKGROUND AND EVALUATIONS

4. Claimant lives at home with his maternal grandmother and his younger brother. He receives psychiatric care for mood disorder, self-harm/self-cutting, and oppositional defiance. He has a prescription for Abilify to control his mood.

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5. In December 2007, claimant first received an Individualized Education Program (IEP) from his school district. Claimant's most recent IEP amendment, dated September 1, 2016, notes that claimant is diagnosed with Other Health Impairment. The IEP reported claimant receiving special education services in a general education setting in a non-public school placement. The district implemented a behavior support plan and provided claimant with an adult assistant during the school day. The IEP reports that claimant is easily distracted, struggles with anger management, and exhibits defiant and impulsive behavior at school. He attacked another student on the school bus, causing serious bodily harm. Claimant has been home-schooled since May 2016.

6. Norma Huerta, M.F.T.I., a therapist at the Adolescent Outpatient Program at Gateways Hospital, has provided mental health services and weekly individual therapy to claimant since September 2015. Claimant also meets monthly with the program's staff psychiatrist, Dr. Pietryga, to monitor his progress. In a letter dated December 7, 2016, to whom it may concern, Ms. Huerta wrote that claimant was receiving home schooling, had stopped cutting himself, which he had been doing at school, and had improved behaviors with his grandmother and his brother.

7. In May 2016, Ms. Huerta and Dr. Pietryga referred claimant to Kenneth Allen, Ph.D., at Gateways Hospital "to aid in diagnostic clarification, and assist with

treatment planning." (Ex. 8.) Dr. Allen administered the Wechsler Intelligence Scale for Children–Furth Edition (WISC-IV), the Minnesota Multiphasic Personality Inventory–Adolescent (MMPI-A), and the Wisconsin Card Sort Test (WCST). Dr. Allen noted claimant's history of aggression at school, social reservation, and a growth disorder of the tibia. He observed claimant to be "respectful, focused and cooperative," and able to detect social cues related to testing, and noted that claimant prefers solitary activities. Dr. Allen did not diagnose claimant; he recommended continued therapy focused on social skills.

CLAIMANT'S SERVICE AGENCY-RELATED EVALUATION

8. On February 7, 2017, Ms. Tapia-Montes received a referral for claimant from his grandmother and scheduled a psychosocial assessment and a psychological evaluation.

9. On February 23, 2017, Mercede Shamlo, M.S., Assessment Coordinator at FDLRC, performed a psychosocial assessment of claimant. Claimant was referred to FDLRC "to rule out developmental disability, possibly Autism Spectrum Disorder." (Ex. 4.) Ms. Shamlo recommended further cognitive testing and a review of school records and mental health assessments. Ms. Shamlo noted that claimant reads, writes, and understands complex English, is skilled at drawing and sketching, and developed normally until he had meningitis at age three, and that he has maladaptive behaviors. His grandmother wants him to be able to function as independently as possible; she is concerned about his self-destructive nature and his ability to cope outside the home.

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10. Kathy Khoie, Ph.D., a licensed clinical psychologist, performed a psychological evaluation of claimant for the Service Agency on February 13, 2017, "to clarify his diagnosis and to determine eligibility for Reginal Center services." (Ex. 6.) Dr.

Khoie reviewed claimant's 2016 IEP, therapist records from Gateway Adolescent Outpatient Services (Gateway), and a 2016 school summary assessment report. Dr. Khoie reported conducting a behavioral observation and clinical interview of claimant and an interview of claimant's grandmother, and administering the following tests: Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV), Autism Diagnostic Observation Schedule-2, Module 4 (ADOS-2, Module 4), Autism Diagnostic Interview-Revised (ADI-R), and the Adaptive Behavior Assessment System, Third Edition (ABAS-3).

11. Dr. Khoie noted that claimant made good direct contact and was responsive to her questions; she described him as calm, polite, and cooperative, with a shy social presentation and clear though soft-spoken speech. He was verbally interactive, but his social communication skills were poor, he required prompting, and he did not initiate conversation. He said "nice meeting you" to Dr. Khoie at the end of the examination. "No restricted or repetitive behaviors were noted." (Ex. 6, p. 3.)

12. Dr. Khoie wrote that claimant's grandmother reported claimant's typical development until the age of five, when he started exhibiting verbal and physical aggressive behaviors, which continued as he got older. He destroyed his grandmother's furniture, threatened to kill a school principal, and was arrested. She reported that though claimant can speak fluently, he does not speak much to her, saying only "yes, ma'am," or "no, ma'am." Claimant told Dr. Khoie he prefers not to have conversations and to be by himself. Claimant's grandmother reported no past or current concerns about repetitive or restrictive behaviors. Claimant can bake and cook simple foods, but will not go to the store unaccompanied. Claimant's grandmother reported that claimant is smart and that he could read the Harry Potter novels when he was five years old.

13. Dr. Khoie wrote that due to discrepancies in his WAIS-IV index scores, she could not determine an overall IQ score. She evaluated claimant's cognitive subscale scores, where claimant was in the deficit range in processing speed, in the average

range in perceptual reasoning, borderline in verbal comprehension, and low-average in working memory. Overall, eight out of 10 WAIS-IV subtest scores were average or low average, so Dr. Khoie estimated claimant's overall IQ at low average. Claimant was in the deficit range in adaptive functioning, according to information provided by his grandmother in completing the ABAS-3. The rest of his adaptive skills were in the deficit to low average range. Claimant's ADOS-2, Module 4, scores did not meet the cutoff for Autism Spectrum Disorder (ASD). Claimant scored zero on restrictive and repetitive behaviors, but he scored nine on social communication. Claimant's ADI-R scores did not meet the cutoff for ASD.

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14. Dr. Khoie diagnosed claimant with Social Communication Disorder. She summarized her findings as follows:

> Autism was assessed for and in the absence of restricted and repetitive behaviors or activities, Social Communication Disorder was diagnosed. [Claimant's] intellectual functioning was estimated in the low average range with relative strengths in nonverbal intelligence (perceptual reasoning). His overall adaptive functioning score was reported in the deficit range. [Claimant] does not meet the diagnostic criteria for ASD. He receives a diagnosis of Social Communication Disorder. He has symptoms of ADHD as well [as] history of psychiatric symptoms.

(Ex. 6, p. 7.)

15. Dr. Khoie recommended that claimant "*receive a more thorough psychiatric evaluation and interventions*." (Ex. 6, p. 8, italics added.) She also recommended that claimant "be monitored for his aggressive tendencies," and "continue receiving his treatments for his mood disorder, ADHD and anger management." (*Id*. at pp. 7-8.)

16. Yadira Navarro, Ph.D., a clinical psychology vendor and former intake specialist with the Service Agency, testified that, to be diagnosed with ASD, claimant must demonstrate deficits in social communication and restrictive and repetitive patterns of behavior. Claimant demonstrates social communication deficits, but he does not have restrictive and repetitive behavior patterns. He did not demonstrate repetitive speech or echolalia.

17. Claimant's grandmother was with claimant during his testing by Dr. Khoie. She testified that Dr. Khoie's psychological examination of claimant lasted only about 30 minutes, and that she did not believe Dr. Khoie could adequately assess claimant in that amount of time. Dr. Khoie's report shows no indication that the testing or report were performed hurriedly; there are no errors in claimant's name and no misspellings, all testing observations and scoring are described in detail, and Dr. Khoie's results are consistent with the other evaluations and assessments claimant has received from medical and mental health professionals. There is insufficient evidence to conclude that Dr. Khoie's testing did not comply with the requirements for the tests applied or that her results should be discounted.

18. Claimant's grandmother testified that claimant sought an eligibility determination for claimant at claimant's social worker's insistence. She testified that claimant does engage in repetitive behaviors—when she takes claimant to a store and he loses sight of her, claimant rocks and repeats "where's my granny," and breaks things. He just stays in his room, on his computer. He does not like dealing w/ people.

She testified that she would just like to get claimant some help. Until Dr. Khoie evaluated claimant, no one had ever mentioned a diagnosis of social communication disorder, and she would like claimant to receive appropriate treatment for that condition. She is worried about claimant's well-being in the future, when she can no longer care for him.

19. Claimant chose not to testify.

20. There is no indication that claimant has seizures or cerebral palsy. There is no support for a diagnosis of ASD in claimant's ADOS-2 and ADI-R results, which assess for ASD as defined in the DSM-5. Claimant did not establish eligibility under the category of intellectual disability. He is in the low average range on the WAIS-IV, though results were insufficient to identify an overall IQ. Nor is claimant eligible for services under the fifth category. The evidence does not establish that claimant has a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability.

21. Claimant would instead benefit from services and supports designed to address his Social Communication Disorder, and, as Dr. Khoie recommended, from a more thorough psychiatric evaluation than he has received.

22. Claimant may submit to FDLRC the results of any additional assessments performed by any medical or mental health professionals for FDLRC's consideration.

LEGAL CONCLUSIONS

1. Cause does not exist to grant claimant's request for regional center services, as set forth in Factual Findings 1 through 22, and Legal Conclusions 2 through 4

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a

preponderance of the evidence, that he is eligible for government benefits or services. (*See* Evid. Code, § 115.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for [him]." (Welf. & Inst. Code, § 4512, subd. (a).) There are five categories of developmental disability that may be used to establish eligibility for regional center services. (*Ibid.*; see Factual Finding 2, fn. 2.)

4. Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act based on a diagnosis of any category of eligibility. (Factual Findings 4-22.) A diagnosis of Social Communication Disorder does not satisfy the requirement of an eligible diagnosis of intellectual disability or ASD under section 4512, subdivision (a). Nor did claimant establish by a preponderance of the evidence that he qualifies for regional center services under the fifth category of eligibility, or any other category (Factual Findings 4-22.) It is not disputed that claimant will likely benefit from further psychiatric evaluation and appropriate services tailored to mitigate the effects of his condition. But, because claimant's disabilities are not any of the five developmental disabilities qualified for regional center services, FDLRC is not required to provide those services to claimant.

ORDER

Claimant's appeal is denied.

DATE:

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HOWARD W. COHEN

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.