

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH Case No. 2017060803

DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on August 2, 2017.

There was no appearance by or on behalf of claimant.

Alta California Regional Center (ACRC) was represented by its Legal Services Manager Robin Black.

The record was closed and the matter was submitted for Decision on the written exhibits on August 2, 2017.

ISSUE

Did claimant establish that he has a “developmental disability” within the meaning of the Lanterman Act, Welfare and Institutions Code section 4500 et seq., and is therefore eligible for Regional Center Services?

FACTUAL FINDINGS

1. Claimant was referred to ACRC based on a suspected disability of Autism Spectrum Disorder when he was seven years, nine months old. On March 14, 2017, ACRC Intake Specialist Maria Mendezona met with claimant, his father and stepmother (parents) for intake and a social assessment. In her March 14, 2017 Social Assessment, Ms. Mendezona indicated that claimant's eligibility would be reviewed by ACRC's multidisciplinary Eligibility Review Team.

2. On May 16, 2017, ACRC issued a Notice of Proposed Action, indicating that claimant was determined not to be eligible for Regional Center services, because he did not have a developmental disability as defined by the Lanterman Act. As explained in its letter to claimant's father, this determination was reached by ACRC's interdisciplinary team, composed of its clinical psychologist, physician and intake specialist, after a review of claimant's medical, psychological and educational records, and family history.

3. On June 14, 2017, claimant filed a Fair Hearing Request and indicated disagreement with ACRC's initial evaluation. Claimant believed ACRC "did not take into consideration all the information provided to the staff involved . . . and Psychologist only spent 35 minutes with my son." Claimant's parents asked that ACRC take time to fully evaluate and talk with claimant's therapist and psychiatrist and to review all information.

4. On June 20, 2017, a Notice of Hearing, in English and in Spanish, was sent to claimant's address, setting forth the date, time and place of the August 2, 2017 fair hearing.

5. On June 29, 2017, claimant's parents participated in an Informal Meeting with ACRC staff, including Ms. Mendezona and Staff Psychologist Jamie Miltz. Claimant's Colusa County Behavioral Health Therapist, Francisca Ines Duenas, LMFT, was

also present. Following this meeting, ACRC affirmed its determination that claimant was not eligible for Regional Center services.

6. At the hearing, there was no appearance by or on behalf of claimant, who was timely notified of the date, time and place of hearing. There was no time waiver on file and no request for a continuance.¹

LANTERMAN ACT ELIGIBILITY

7. Welfare and Institutions Code section 4512, subdivision (a), provides the following definition of the “developmental disability” required for eligibility:

“Developmental disability” means 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.

¹ A Spanish Language interpreter was present at the hearing to assist claimant’s parents.

8. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as follows:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

9. California Code of Regulations, title 17, section 54000, clarifies the Lanterman Act’s definition of developmental disability, and identifies three excluded conditions. It provides:

(a) “Developmental Disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual. . .

(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 mental retardation, 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 mental retardation.

ELIGIBILITY DETERMINATION

10. Social Assessment: In her Social Assessment, Ms. Mendezona observed claimant and interviewed his parents in both English and Spanish. The parents indicated claimant was delivered at full term and was healthy at birth. He has had no history of seizures or convulsions. For the first several years of his life, claimant received California Early Start Early Intervention Services from ACRC, based on gross motor delays. He has never been determined eligible for Lanterman Act services.

At an early age, claimant's biological mother had custody of claimant and his brother, and they lived with her for approximately four years. Father eventually discovered that the biological mother was involved in drug usage and that the children had experienced long periods of homelessness and exposure to intravenous drug users. Father now has full custody.

Ms. Mendezona observed claimant to be verbal and quick with words. He interacted with her and had good eye-to-eye contact. Father expressed concerns about claimant's mental health, noting that claimant hears voices, is aggressive and his school behaviors are escalating. Claimant's stepmother concurred and reported he hears voices from six different characters. She shared other concerns about claimant, including that he has difficulty expressing emotions, is extremely literal and has problems with pragmatics.

Although not observed by Ms. Mendezona, claimant was reported to have the following autistic-like characteristics: poor eye contact; looking through the periphery of eyes; difficulty with changes; and sensitivity to certain sounds. He was said to have

separation anxiety, to rock back and forth, to have a “swagger” when he walks, and to prefer playing with younger children.

Ms. Mendezona was provided documents pertaining to claimant’s February 18, 2017 hospitalization at St. Helena Hospital of Behavioral Health (St. Helena); a psychological evaluation by Dr. Paul Reiser, Ph.D.; a letter from claimant’s counselor, and some educational records. She also assessed claimant’s adaptive skills, based on information provided by the stepmother and contained in the records provide to her. This information and assessment was made available to the Eligibility Review Team.

11. Colusa County Department of Behavioral Health Records: In her January 17, 2017 letter, Ms. Duenas summarized that she had seen claimant in therapy since December 27, 2016, and that her provisional diagnosis “is Anxiety Disorder, Unspecified with the rule out of PTSD, and ADHD-combined. Client would benefit from intensive CCBH services as he scored high on the medical necessity form and multiple behavioral issues on Children’s Behavioral Check List.”

12. St. Helena Records: On February 16, 2017, at age seven, claimant was admitted to St. Helena under Welfare and Institutions Code section 5150, as a danger to himself and others. This was claimant’s first psychiatric hospitalization. He reported auditory hallucinations of three voices telling him to run away and to run into traffic to hurt himself. He denied suicidal or homicidal ideation. An initial psychiatric evaluation by Kamalijeet Boora, M.D., found claimant to be of average intelligence, with intact memory, and depressed mood. Dr. Boora diagnosed claimant with “Mood Disorder, not otherwise specified [NOS], rule out psychotic disorder.”

13. Dr. Paul Reiser’s Psychological Report: While at St. Helena, claimant was seen by Dr. Reiser for psychological testing, to “clarify cognitive/neuropsych functioning and the possibility of psychosis.” In addition to a review of history and records, Dr. Reiser administered various tests to claimant, including: (1) the Wechsler Intelligence

Scale for Children – Fifth Edition (WISC-V), which yielded a Full Scale IQ score of 91 (in the average range); (2) the Children’s Depression Inventory -2 (total score in average range, although claimant refused to answer many questions); (3) the Word Reading and Math Computation subtests of the Wide Range Achievement Test – 4 (average range scores); and (4) the Developmental Test of Visual-Motor Integration (average range score). Dr. Reiser summarized that claimant was in the average range of intellectual functioning, but exhibited a large disparity between his Visual Spatial Index (at the 70th percentile) and his Verbal Comprehension (at the 14th percentile), which the school should address. Claimant’s self-reports showed him to be anxious and sad for his age. The main findings on claimant’s emotional functioning “were data suggestive of recent psychotic process.” Dr. Reiser concluded that he could not rule out ADHD or PTSD.

14. Claimant remained at St. Helena voluntarily until his discharge to home on February 24, 2017. In her February 24, 2017 Discharge Summary, Sarah M. Hunter, M.D., listed claimant’s discharge diagnosis as “Autism Spectrum Disorder [ASD], rule out psychotic disorder.” He was prescribed Abilify² and scheduled for therapeutic and psychiatric follow up at Colusa Mental Health.

15. Dr. Majestic’s Psychological Evaluation: ACRC referred claimant to Cassie Majestic, Psy.D., for a “limited scope psychological evaluation.” The purpose of the evaluation was to assess claimant’s “current intellectual and adaptive functioning and to assess for an autism spectrum disorder.” Dr. Majestic holds a doctorate in clinical psychology. She is in private practice, specializing in treating youth and adults, as well as in conducting psychological assessments.

As detailed in her May 3, 2017 Psychological Evaluation Report, Dr. Majestic conducted a detailed review of claimant’s school, psychological and behavioral health

² The Medication List indicates this prescription is for “autism, with Irritability.”

records, and other reports. In addition to clinical interviews and behavioral observations, she administered the Vineland Adaptive Behavior Scales – Third Edition (Vineland -3) and the Autism Diagnostic Observation Schedule – Second Edition (ADOS-2). In her review of the records, Dr. Majestic found it noteworthy that Dr. Hunter “did not provide information about why she diagnosed ASD or what symptoms [claimant] met that lead [s/c] to this conclusion. On the other hand, the admitting physician, Kamaljeet Boora, M.D., described a similar behavioral presentation and offered an initial diagnosis of Mood Disorder NOS with a rule-out of Psychotic Disorder.”

Dr. Majestic described the ADOS-2 as the “gold standard” for assessing ASD; however, she clarified that its results must be interpreted in conjunction with the clinical criteria set forth in the Diagnostic and Statistical Manual – Fifth Edition (DSM-V), the individual’s demonstrated skills throughout the evaluation, and clinical history. Based on the totality of the evidence, Dr. Majestic determined that claimant did not qualify for a diagnosis of Autism Spectrum Disorder because he did not demonstrate persistent deficits in social communication and social interaction across multiple contexts, or restricted, repetitive patterns of behavior, interest, or activities as required by the DSM-V. Claimant did not qualify for a diagnosis of intellectual disability, because intellectual testing demonstrated that he is capable of achieving average scores in major areas of intelligence. Due to mental health and behavioral symptoms noted, Dr. Majestic provided the following diagnoses for claimant: “Rule out Attention-Deficit/Hyperactivity Disorder; Rule out Posttraumatic Stress Disorder; Rule out Psychotic Disorder.”

DISCUSSION

16. As discussed below, the burden is on claimant to establish his eligibility for Lanterman Act services. Because claimant did not appear and present evidence, this burden was not met. The only evidence presented established that claimant does not

meet criteria for eligibility under any statutory category. For this reason, the appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act does not assign the burden of proof to either party, and no appellate court has decided this issue. Typically, the burden of proof is on an individual seeking rights or services. Consistent with this principle and in the absence of any applicable statute under the Lanterman Act, the burden is on the claimant to prove, by a preponderance of the evidence, that he has a “developmental disability” which originated prior to age 18 that constitutes a substantial disability for him. (Welf. & Inst. Code, § 4512, subd. (a); Evid. Code, §§ 500, 115.)

2. As set forth in the Factual Findings and Legal Conclusions as a whole and, particularly, in Findings 10 through 16, claimant did not meet his burden of establishing that he has a “developmentally disability” as defined by the Lanterman Act.

ORDER

Claimant’s appeal is DENIED.

DATED: August 3, 2017

MARILYN WOOLLARD

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 this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)