

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2017090276

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge (ALJ) with the Office of Administrative Hearings on December 14, 2017, in Lancaster, California.

Claimant represented himself.

North Los Angeles County Regional Center (service agency or regional center) was represented by Stella Dorian, Fair Hearing Representative for the service agency.

Evidence was received, and the matter was deemed submitted for decision on December 14, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act based any of the four qualifying conditions¹ or

¹ The four qualifying conditions for regional center services are autism, cerebral palsy, epilepsy, and mental retardation (now referred to as intellectual disability).

on "the fifth category," which is a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

FACTUAL FINDINGS

1. Claimant is a 24-year-old man who is requesting eligibility for regional center services based on Autism Spectrum Disorder and/or Intellectual Disability.
2. Claimant was in Special Education classes while in school. His eligibility for Special Education was Specific Learning Disability.
3. In Claimant's 2010 Psycho-Educational Report, School Psychologist H. Hernandez opined that claimant "most likely has average cognitive abilities or learning potential." Claimant's strengths were reported in overall visual processing, auditory comprehension of factual information, and sensory-motor integration. Claimant's weaknesses were reported in phonological blending and most short-term auditory and short-term memory areas. In the Kaufman Test of Educational Achievement, 2nd Edition, claimant scored below average in the Reading Composite test, and in the average range in the Math Composite. Finally, respondent scored in the average range in the Written Language test.
4. Claimant's transcripts from high school show that he performed poorly in the ninth grade, but showed significant improvement in the 10th, 11th and 12th grades. He averaged a 3.0 Grade Point Average (GPA) in the 10th grade, a 2.0 GPA in the 11th grade, and above a 3.0 GPA in the 12th grade.
5. Robert J. Rome, Ph.D., evaluated claimant on May 9, 2008. Dr. Rome reported that claimant scored in the low average to average range in intellectual functioning in the Wechsler Intelligent Scale for Children. Dr. Rome noted that claimant's communication skills were in the mildly deficient range, while his adaptive

functioning was in the low end of the borderline range on the Vineland Adaptive Behavior Scales, Second Edition. To determine whether claimant suffered from Autistic Disorder, Dr. Rome utilized the Autism Diagnostic Observation Schedule (Module 3), the Autism Diagnostic Interview – Revised. Dr. Rome opined that claimant’s symptoms and behaviors were below the threshold for a diagnosis of Autistic Disorder. Finally, Dr. Rome noted that claimant has significant vision problems, being legally blind in his left eye and partially blind in his right eye. Because of claimant’s vision problems, Dr. Rome did not administer academic testing, and did not calculate a Full-Scale IQ.

6. Claimant applied for regional center services in 2013. Dr. Rome evaluated claimant again on December 26, 2013. Dr. Rome noted that claimant scored in the low average range in cognitive functioning in the Wechsler Intelligent Scale, Fourth Edition. Dr. Rome stated that claimant’s Full-Scale IQ of 82, which is in the low average range. Dr. Rome noted that claimant’s communication skills and his adaptive functioning were in the mildly deficient range on the Vineland Adaptive Behavior Scales, Second Edition. Finally, claimant scored in the non-autistic range in the Autism Diagnostic Observation Schedule – 2 (Module 4). Dr. Rome diagnosed claimant with Unspecified Depressive Disorder; Adjustment Disorder with Depressed Mood; Language Disorder; and Speech Sound Disorder.

7. In a Notice of Proposed Action dated January 27, 2014, the Service Agency determined that claimant was not eligible for regional center services based on its contention that he did not suffer from autism, intellectual disability, cerebral palsy, epilepsy, or from a disabling condition under the “fifth category” as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title 17, section 54000. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Act.

8. Claimant applied for regional services again in 2017, based on his

contention that he suffers from Autistic Disorder and Intellectual Disability. Claimant supported his contention by submitting records from the Los Angeles County Department of Health, which indicate that on January 27, 2015, claimant was diagnosed with Mental Retardation (Severity Unspecified), and Autistic Disorder, and Major Depressive Disorder. The diagnoses set forth in these records do not contain the underlying reports that would explain how these mental health professionals arrived at these diagnoses.

9. Heike Ballmaier, Ph.D., reviewed the records relevant to claimant's application for regional center services and testified on behalf of the service agency. Dr. Ballmaier has over 25 years' experience working as a psychologist, and has worked with and for the service agency as a consulting psychologist and supervising psychologist since 1999. Dr. Ballmaier testified that the records in this case do not establish that claimant suffers from Autistic Disorder under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) or Autism Spectrum Disorder under the DSM-V. Dr. Ballmaier further testified that the records do not establish that claimant has an Intellectual Disability under either the DSM-IV or the DSM-V. In addition, Dr. Ballmaier opined that claimant does not suffer from an intellectual disability because all previous psychological reports and school records note that claimant suffers from a learning disability, but has low average cognitive abilities. Dr. Ballmaier further opined that claimant does not have a condition that is similar or closely related to an intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability. Dr. Ballmaier testimony is given great weight because of her comprehensive review of the entire record of this case, and her extensive experience is performing psychological assessments of individuals who have applied for regional center eligibility. In addition to her clinical experience, as Supervisor for the Psychology/Intake Service Department for the regional center, Dr. Ballmaier supervises

staff psychologists and supervises and trains vendor clinicians who perform psychological assessments and psycho-social assessments for the regional center.

10. Dr. Margaret Swaine, a pediatrician, reviewed claimant's medical records and determined that claimant does not suffer from cerebral palsy or epilepsy.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mental retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability.

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

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

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

3. California Code of Regulations, title 17, section 54001 defines substantial disability as follows:

- (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
- (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
 - (A) Receptive and expressive language;
 - (B) Learning;
 - (C) Self-care;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency.

4. For claimant to be eligible for regional center services, the service agency must determine that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

5. Claimant does not suffer from cerebral palsy or epilepsy. Therefore, claimant is not eligible for regional center services based on those conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a),

6. The evidence did not establish that claimant suffers from an intellectual disability. In fact, the psychologists who assessed claimant determined that claimant's

cognitive/intellectual skills are within the low average range. Therefore, claimant is not eligible for regional center services based on an intellectual disability pursuant to Welfare and Institutions Code section 4512, subdivision (a).

7. Claimant is not eligible for regional center services based on the fifth category because the evidence did not establish that he suffers from a disabling condition that is closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

8. The DSM-V Diagnostic Criteria for Autistic Spectrum Disorder is as follows:

- A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
 - 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 understand relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

Severity is based on social communication impairments and restricted, repetitive patterns of behavior. (Bold in original)

- B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):
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 hypo-activity 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).

Severity is based on social communication impairments and restricted, repetitive patterns of behavior. (Bold in Original)

- 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 in later 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.
- Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

9. The evidence in this case did not establish that claimant meets the above criteria of Autistic Spectrum Disorder. Dr. Rome determined that claimant does not suffer from Autistic Disorder under the DSM-IV, and Dr. Ballmaier concluded that claimant does not suffer from Autistic Disorder under the DSM-IV, nor does he suffer from Autism Spectrum Disorder under the DSM-V.

10. Claimant did not establish that he has a developmental disability. Therefore, he is not eligible for regional center services.

ORDER

The North Los Angeles County Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: December 29, 2017

HUMBERTO FLORES

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.