

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2018010006

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on May 31, 2018, in Oakland, California.

Claimant's father advocated for claimant, with assistance from Legal/Medical Interpreter Idania Lazo. Claimant was present.

Fair Hearing and Mediation Specialist Mary Dugan represented service agency Regional Center of the East Bay (RCEB).

The record was held open for receipt of a document claimant wished to offer into evidence, but had not brought to the hearing. As a courtesy to claimant, RCEB timely provided the document, which was marked for identification as Exhibit A and admitted into evidence.

The record closed and the matter was submitted for decision on June 1, 2018.

ISSUE

Does claimant have a developmental disability that qualifies him for services from RCEB under the Lanterman Developmental Disabilities Services Act (Lanterman Act,

Welf. & Inst. Code, § 4500 et seq.)?

FACTUAL FINDINGS

1. Upon request by the Alameda County Superior Court, RCEB evaluated claimant's eligibility for RCEB services. RCEB determined that claimant is not eligible, and claimant timely requested a hearing.

2. Claimant was born in 1967, in Colorado. The evidence did not establish when claimant began to live in California.

3. When he was between three and four years old, claimant fell from a third-story window to a grassy lawn. Although claimant did not seem at the time to his parents to have suffered any injury, his father believes that his behavior changed after this fall. Neither claimant nor his father provided any other testimony about claimant as a child, and no educational or medical records from claimant's childhood were in evidence.

4. Records in evidence described some aspects of claimant's life history, in part through clinicians' paraphrases of claimant's self-reports. These records were sparse.

- a. The records in evidence state consistently that claimant received special education services as a child. They do not state why he received such services, or what services he received.
- b. A November 2011 record from Rosemarie Ratto, Ph.D., at Sunnybrook Medical Group in Hayward, states that claimant reported to her that he had "been arrested a few times 'a long time ago'" and spent "a few weeks in jail." In contrast, a March 2017 record signed by Carolyn Doyle, M.D., states that claimant has been "[i]ncarcerated most of juvenile and adult life," including two-and-one-half years in prison in Utah and a similar period in prison in California.

c. Dr. Ratto stated in November 2011 that claimant "reports no alcohol or drug history." Dr. Doyle stated in March 2017 that claimant "uses crack and cannabis daily for many years."

d. Claimant did not explain or clarify the information in these records.

5. Claimant received Supplemental Security Income (SSI) between June 1981 and March 1986, between October 1988 and September 1991, between July 1994 and July 1996, and between August 1998 and the time of the hearing. The evidence did not establish why claimant received or receives SSI.

6. Dr. Ratto's report states that she evaluated claimant for the Social Security Administration. She administered the Wechsler Adult Intelligence Scale IV (WAIS-IV), a test of cognitive ability. Dr. Ratto reported that claimant's test performance indicated a "Full Scale I.Q." of 45.

7. A Social Security Administration "Mental Residual Functional Capacity Assessment" from November 2011, signed by a "D. Lucila MD," was also in evidence. This document states that claimant was "not significantly limited" in memory or decision-making, and "moderately limited" in his attention and social interaction. It describes claimant as "markedly limited" in his ability to sustain employment "without interruptions from psychologically based symptoms." The assessment states diagnoses of depression and "learning DO," but not "subaverage general intellectual functioning."

8. The evidence included records from two counseling or psychotherapy sessions at La Clinica San Antonio Neighborhood Health Center in Oakland, one in February 2017 and one in March 2017. Both records, signed by licensed clinical social worker Sim Kuen Cheung, state diagnoses of anxiety disorder and major depressive disorder.

9. Dr. Doyle noted depression and anxiety as claimant's major mental health problems, but recommended that he "reduce, ideally discontinue, all recreational

substance use and be re-assessed due to writer's concern that his substance use may be causing and/or worsening his stress/depressed mood."

10. Lisa Kalich, Psy.D., met claimant in July 2017, at the request of a criminal defense attorney who represented claimant. A letter describing Dr. Kalich's interview with claimant was in evidence. The letter describes claimant as showing "deficits in orientation and memory," and as being "somewhat argumentative and uncooperative." Dr. Kalich drew no definitive conclusions regarding claimant and stated no diagnosis, but expressed doubts regarding claimant's competence to stand trial in a criminal matter.

11. Rachyll Dempsey, Psy.D., performed a psychological assessment of claimant for RCEB in October 2017. Dr. Dempsey was unable to complete her full assessment because claimant refused to cooperate in, or to make an honest effort on, the first few tests she conducted.

12. With Dr. Dempsey, claimant spoke fluently and used adult vocabulary. At one point during the testing, claimant told Dr. Dempsey that if he guessed at an answer without actually considering the two alternatives, he would have "a 50/50 chance" of being right. Claimant asked Dr. Dempsey personal questions that he based on observations of her clothing and her office; when she interviewed his father in claimant's presence, claimant interrupted his father to correct his father's answers. After reading Dr. Dempsey's handwriting upside down, from across her desk, claimant commented on her notes.

13. Dr. Dempsey also reviewed earlier assessments of claimant, including the two Social Security Administration assessments from November 2011 described above in Findings 6 and 7. Dr. Dempsey rejected Dr. Ratto's conclusion that claimant has a "Full Scale I.Q." of 45, noting that a person with such low intelligence would show obvious and severe functional deficits as compared to most adults.

14. Dr. Dempsey concluded that claimant has no intellectual disability, and evidenced “no deficits in socialization, communication, or basic activities of daily living.” He was “manipulative [and] superficially charming, with lack of empathy or conscience.” Although she did not test for or diagnose a mental illness, she suspects that claimant may have a personality disorder. Her opinion that claimant does not have any intellectual disability, however, was persuasive.

15. No evidence suggests that claimant may have an autism spectrum disorder, epilepsy, or cerebral palsy.

16. RCEB staff clinical psychologist Faith Tanner, Psy.D. reviewed all documentary evidence available to RCEB about claimant, including Dr. Dempsey’s report. With respect to Dr. Ratto’s evaluation in November 2011, Dr. Tanner also rejected the possibility that Dr. Ratto measured claimant’s intelligence accurately. She testified credibly that a person scoring so low on the WAIS-IV would have the intellectual capacity of a preschool child.

17. RCEB staff pediatrician Paul Fujita, M.D., also reviewed all documentary evidence available to RCEB about claimant, including Dr. Dempsey’s report. Dr. Fujita estimates that he has participated in hundreds if not thousands of eligibility determinations during more than 25 years of working with regional centers in the Bay Area and in Los Angeles.

18. Dr. Tanner and Dr. Fujita concluded that claimant had not established either that he has a developmental disability, as the Lanterman Act defines that term, or that he suffers substantial impairment in daily activity because of any such disability. Their conclusions are persuasive.

LEGAL CONCLUSIONS

1. Claimant would be eligible under the Lanterman Act for RCEB’s services only if he had a “developmental disability.” (Welf. & Inst. Code, § 4501.) Claimant bears

the evidentiary burden of demonstrating his eligibility.

2. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) The Lanterman Act also covers persons with "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Although they may impair social or intellectual functioning, psychiatric disorders and learning disabilities are not "developmental disabilities" under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

3. The evidence in this matter did not establish that claimant has a developmental disability.

4. A qualifying disability must be "substantial," meaning that it causes "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." (Welf. & Inst. Code, § 4512, subds. (a), (1)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The evidence in this matter did not establish that claimant has substantial disability.

ORDER

Claimant's appeal from RCEB's determination that he is ineligible for services under the Lanterman Act is denied.

DATED: June 14, 2018

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.