

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

OAH No. 2018060749

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Los Angeles, California on June 25, 2018.

Claimant's foster mother represented Claimant, who was not present. The names of Claimant and her foster parents are omitted to protect their privacy.

Karmell Walker, Fair Hearing Manager, represented the South Central Los Angeles Regional Center (SCLARC).

The matter was submitted on June 25, 2018.

ISSUE

Whether Claimant is eligible for services under the Early Start program.

EVIDENCE RELIED UPON

Exhibits: SCLARC exhibits one through four; Claimant's exhibits A through C.
Testimony: Kimi DesRoches-Hynes; Claimant's foster mother.

FACTUAL FINDINGS

1. SCLARC determines eligibility and provides services under the Early Start program established by the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) for infants and toddlers who are born with, or at risk for, developmental delay or disability.

2. Claimant is a seven-month-old girl who has been placed in foster care by the Los Angeles County Department of Children and Family Services (DCFS) under an order for out-of-home care by the Juvenile Division of the Superior Court of California, County of Los Angeles. Claimant lives with her foster mother and father, who are also the adoptive parents of Claimant's biological brother.

3. On a date not established, a DCFS social worker referred Claimant to SCLARC due to Claimant's premature birth and her birth mother's reported drug and alcohol abuse during pregnancy. On April 24, 2018, Claimant's foster parents brought Claimant to SCLARC for an Early Start program assessment.

4. SCLARC assessed Claimant and determined she was not eligible for Early Start program services. SCLARC notified Claimant's foster mother of that determination on May 8, 2018.

5. On June 8, 2018, the Office of Administrative Hearings received a due process hearing request from Claimant's foster mother appealing the determination and "question[ing] [why] there was no exam or te[s]t done to the baby." (Exhibit 1.)

CLAIMANT'S BACKGROUND

6. Claimant was born prematurely at 34 weeks gestation on January 5, 2018. The DCFS referral to SCLARC indicated that Claimant's birth mother reported using heroin on a daily basis during the pregnancy. In addition, Claimant's foster parents told

SCLARC that Claimant's birth mother abused heroin, cocaine, and alcohol during the pregnancy.

7. Claimant was treated with morphine after her birth for neonatal abstinence. Following her discharge from the hospital, she had ongoing fussiness and irritability and awakened frequently after feeding. At a medical examination on February 26, 2018, those symptoms were reported to be improving and Claimant's growth was tracking on the premature birth growth chart. She had a well-baby checkup on April 5, 2018, and Claimant's foster mother reported no concerns arising from that checkup. Claimant has not had a serious illness since she was discharged from the hospital.

ASSESSMENT AND DETERMINATION OF INELIGIBILITY

8. Claimant was 3.5 months old at the SCLARC assessment on April 24, 2018, with an adjusted age of 2.25 months when accounting for her premature birth. She was awake for most of the intake appointment and was able to make eye contact for a few seconds, but was not tracking. Her foster parents reported that Claimant slept most of the day and could not hold her head up without support for one minute. They also reported that Claimant did not laugh or look toward the source of a sound, and did not exhibit any signs of anticipating feeding when shown a source of food. Human interaction also did not provide a calming effect when Claimant was upset.

9. Gerald D. Alpern, Ph.D., assessed Claimant on behalf of SCLARC using Developmental Profile 3 (DP-3), a tool used to screen children for developmental delays. Claimant scored in the delayed range in two areas (socio-emotional and general development) and in the below average range in four others (physical, adaptive behavior, cognitive, and communication), with a developmental age equivalent of zero months. Claimant's service coordinator at SCLARC summarized the results in a Psycho-Social Report and submitted it to an interdisciplinary "Eligibility Team" for review.

10. The Eligibility Team concluded the assessment results did not show a qualifying developmental delay given Claimant's young age and premature birth. The team also concluded Claimant did not have an established risk condition that had a high probability of leading to developmental delay, or two or more qualifying high risk conditions for developmental delay. Therefore, SCLARC denied eligibility for Early Start program services.

TESTIMONY

11. Kimi DesRoches-Hynes, MSW, the Program Manager for SCLARC's Early Start Intake Unit, confirmed that SCLARC identified no established risk condition for Claimant, and only one qualifying high risk condition of developmental delay (prenatal drug exposure), not two or more as required. DesRoches-Hynes also testified that most agencies consider the DP-3 developmental age equivalent to be inappropriate for use in determining an infant's developmental status because the child is so young. Therefore, Claimant's developmental age equivalent of zero months at an adjusted age of 2.25 months did not establish a substantial developmental delay. DesRoches-Hynes's testimony on these issues was persuasive and unrebutted.

12. Claimant's foster mother persuasively testified that Claimant is still not crawling and does not hold a bottle, sit up, roll over, or grab objects like toys. Every loud noise also makes her jump, and Claimant's foster parents are concerned about her development.

EVIDENCE OF AUTHORIZATION TO REPRESENT

13. The record includes two documents concerning Claimant's foster care placement: (1) an Agency-Relative Caregiver Placement Agreement between Claimant's foster mother and DCFS; and (2) an Authorization for General Medical Care from DCFS to Claimant's foster mother. Neither document answers whether Claimant's foster

mother is authorized to represent Claimant in this appeal. The Authorization for General Medical Care allows Claimant's foster mother to consent to ordinary medical and dental care, but not to psychological testing or other listed items. The Agency-Relative Caregiver Placement Agreement also does not address the authority of Claimant's foster mother to pursue this appeal. The court order for Claimant's out-of-home placement was not offered into evidence.

LEGAL CONCLUSIONS

LEGAL STANDARDS

1. The Early Start program is designed to ensure that early intervention services for infants and toddlers with disabilities and their families are provided in a coordinated, family-centered system that is available statewide. To be eligible for the program, infants and toddlers from birth to age 36 months must have: (1) a developmental delay of at least 33 percent in one or more areas of cognitive, communication, social or emotional, adaptive, or physical and motor development including vision and hearing; (2) an established risk condition of known etiology, with a high probability of resulting in delayed development; or (3) a high risk of having a substantial developmental disability due to a combination of two or more biomedical risk factors, the presence of which are diagnosed by qualified personnel. (Gov. Code, § 95014, subd. (a); Cal. Code Regs, tit. 17, § 52022.)

2. "A parent may request ... a due process hearing under any of the following circumstances: [¶] ... [¶] (2) A regional center ... refuses to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services . . ." (Cal. Code Regs., tit. 17, § 52172, subd. (a).) "'Parent' means: [¶] ... [¶] A foster parent, when: [¶] 1. The foster parent has no interest that would conflict with the interests of the child, [¶] 2. The natural parents' authority to make the decisions

required of parents has been limited or relinquished under State law, and [¶] 3. The foster parent is willing to make the decisions required of parents.” (Cal. Code Regs., tit. 17, § 52000, subd. (b)(36)(E).)

3. Claimant has the burden of proving eligibility (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161), and must do so by a preponderance of the evidence (Evid. Code, § 115). A preponderance of the evidence means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

DISCUSSION

4. The authority of Claimant’s foster mother to pursue this appeal is unclear, as the record does not establish how “the natural parents’ authority to make the decisions required of parents has been limited or relinquished under State law.” (Cal. Code Regs., tit. 17, § 52000, subd. (b)(36)(E); see Factual Finding 13.) But even assuming Claimant’s foster mother has that authority, the evidence did not support her suggestion that Claimant was not tested (see Factual Finding 5), or establish another reason to grant the appeal. SCLARC did assess Claimant, and its interdisciplinary Eligibility Team did not identify a qualifying developmental delay or established risk condition of known etiology, with a high probability of resulting in delayed development. (Factual Findings 10-11.) Claimant’s developmental equivalent age of zero months on the DP-3 did not establish a substantial developmental delay, given her adjusted age of 2.25 months at the time of assessment. (*Ibid.*) In addition, the assessment of Claimant identified only one high risk factor for developmental delay – prenatal drug exposure – not two or more as required for eligibility. (*Ibid.*) Therefore, the evidence did not establish Early Start program eligibility, and the testimony of Claimant’s foster mother did not prove otherwise. (Gov. Code, § 95014, subd. (a); Cal. Code Regs, tit. 17, § 52022.)

5. Based on the above, Claimant did not carry her burden of proof, warranting the order below.

ORDER

Claimant's appeal is denied.

DATED:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.