

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2018090994

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Fresno, California, on November 13, 2018.

Tamara Salem, Appeals and Compliance Coordinator, represented the Service Agency, Central Valley Regional Center (CVRC).

Claimant was represented by her uncle and by her mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 13, 2018.

ISSUES

Is CVRC required to further evaluate claimant to determine whether she is eligible for regional center services pursuant to Welfare and Institutions Code section 4512?¹

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

FACTUAL FINDINGS

1. Claimant is a 17-year-old young woman who was referred by her mother to CVRC for a determination of eligibility for regional center services.

2. A Notice of Proposed Action (NOPA) was issued on September 5, 2018, informing claimant as follows:

Proposed action: Decline regional center evaluation.

Reason for action: The 2014 psycho-educational report provides scores of memory and learning in the average range. The 2017 psycho-educational report estimates her IQ to fall in the average range. She has auditory processing difficulties as well as some attention challenges. [Claimant] received special education from March 2011 through April 2015 and then no longer qualified for special education services. There is no evidence of a developmental disability.

3. Claimant's mother appealed CVRC's decision on or about September 22, 2018, stating the following reasons for requesting a fair hearing, and what is needed to resolve her complaint:

I do not agree with the denial of my daughter receiving services. I have worked [with] developmentally disabled people, and people who are more advanced than my daughter is receiving services. I have additional paper to show my child need[s] additional services to help her become independent as she gets older.

I want my child to receive services from CVRC and be placed in a day program, so she can keep developing to become independent. She deserves the same services other people get. I want her to be able to go to college and eventually work.

4. Tammy Miranda is CVRC's Assistant Director of Intake and Clinical Services. She testified that when an individual applies for regional center services an intake is completed to determine whether the individual meets one of the qualifying conditions for regional center eligibility. A review of records available to CVRC did not demonstrate that claimant met one of the eligible conditions. Ms. Miranda testified that there was no available information suggesting that additional assessment was necessary.

5. An initial multidisciplinary psychoeducational report was completed by Fresno Unified School District on February 15, 2011. Claimant was referred for the evaluation by her mother due to her concerns with claimant's "poor academic progress, poor retention of academics, and poor focus and attention." Based on the assessment results, the district determined that claimant "met special education eligibility criteria for Speech Language Impairment." Of importance in this evaluation was the following information:

THIS IS AN ALTERNATIVE ASSESSMENT OF AN AFRICAN
AMERICAN STUDENT. Due to Larry P. vs. Wilson Riles² court

² The decision in Larry P. v. Riles, 793 F. 2d. 969 (1984), prohibits California school districts from using IQ tests to evaluate African American students for placement in special education classes on the grounds that the tests are culturally biased. School districts are required to use alternative means of assessment.

decision prohibiting the intellectual assessment of African American students by school personnel for Special Education consideration, an alternative assessment was administered. Test data, observations, teacher reports, and school work samples were utilized as alternative assessment methods.

6. Fresno Unified School District completed a triennial psychoeducational assessment in August 2014 "to help determine continued special education eligibility and appropriateness of services." This assessment was also noted to be an "Alternative Assessment of an African American Student." The district determined that "based on the assessment results, [claimant] does not meet special education eligibility criteria for Specific Learning Disability. The IEP Team should convene to review the current assessment data, determine eligibility for special education services and determine the most appropriate education placement for [claimant]. Given [claimant] has been successful in the general education setting with minimal special education support, IEP team to discuss plan of how to maintain [claimant's] academic performance."

7. On March 10, 2017, a multidisciplinary psychoeducational report was prepared by Crescent View West Charter High School. It noted that this "assessment is an initial evaluation to help determine special education eligibility and appropriateness of services. [Claimant] had previously received SPED services from 3/1/11 to 4/7/15. The last meeting that was held exited her from SPED services."

8. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can

be expected to continue, indefinitely, and constitutes a substantial disability for that individual. ... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability³ or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

9. California Code of Regulations, title 17, section 54000, further defines the term "developmental disability" as follows:

(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 Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

³ Effective January 1, 2014, the Lanterman Act replaced the term "mental retardation" with "intellectual disability." California Code of Regulations, title 17, continues to use the term "mental retardation." The terms are used interchangeably throughout.

(3) Constitute a substantial disability for the individual as defined in the article.

(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.

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

(l) The existence of significant functional limitation 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:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

11. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(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 functional limitation, 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:

(1) Receptive and expressive language.

(2) Learning.

(3) Self-care.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

12. Claimant's mother testified to difficulties claimant has had at school and at home. She questioned whether the school records were a true representation of claimant's intelligence and suggested claimant might meet regional center eligibility as an individual with an intellectual disability. Prior to hearing, claimant's mother and uncle shared these concerns with CVRC.

13. After further discussions with claimant's family, CVRC agreed to pursue additional assessment and scheduled an intake social assessment for October 11, 2018. Relevant information for this assessment was provided to claimant's mother by letter dated October 3, 2018. Ms. Miranda explained that the prohibition on school districts administering standardized IQ tests for placement does not apply to regional centers. Based on the parent's concern, CVRV agreed to pursue additional testing.

In a telephone conversation on October 8, 2018, claimant's mother informed Ms. Miranda that she desired to cancel the assessment appointment and proceed to hearing. Ms. Miranda explained to claimant's mother during this conversation, and by a follow-up letter dated October 9, 2018, "that CVRC is offering to evaluate [claimant] and that this is the reason the hearing is requested. If you were to pursue the assessment then the hearing

would not need to occur. You choose to continue with the hearing and cancel the assessment.” Ms. Miranda gave claimant’s mother the appropriate contact information in the event she desired to reschedule claimant’s assessment.

14. Claimant’s uncle testified that he had concerns with the CVRC intake process. The family chose to proceed to hearing to share those concerns. Specifically, he was dissatisfied with the original decision, “based on a basic records review” not to pursue additional testing to determine whether claimant might be eligible for regional center services.

15. At hearing, claimant’s mother submitted an El Dorado County Charter SELPA⁴ Individualized Education Program (IEP) dated March 2, 2018, which found claimant eligible for special education based on a Specific Learning Disability. The IEP stated, “due to [claimant’s] difficulty with Auditory Processing, Attention, and Sensory Motor Skills which has impacted her progress in the areas of basic reading skills, reading comprehension, and math calculation, she requires specialized academic instruction and would also benefit from specific accommodations to help her access the curriculum and demonstrate knowledge of grade level standards.”

Also submitted was a CVRC Referral Form from Blanca Alvarez, LMFT, requesting “day treatment, transition to adulthood” for claimant.

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⁴ Special Education Local Plan Area.

LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. ... [T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation [commonly known as the “fifth category”], but shall not include other handicapping conditions that consist solely physical in nature.

2. The statutory and regulatory definitions of “developmental disability” (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, §54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities.

3. The concern in this matter was whether CVRC was required to conduct additional assessments of claimant to determine whether or not she met the eligibility requirements. This was resolved informally prior to hearing. CVRC has agreed to conduct additional assessments and claimant’s parent has been given the necessary information to pursue this option.

ORDER

CVRC shall conduct additional assessments to further determine claimant's eligibility for regional center services, as agreed to prior to hearing, if claimant chooses to pursue assessment.

DATED: November 27, 2018

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearing

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