

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2018100582

DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 23, 2019, in French Camp, California.

Anthony Hill, Attorney at Law, represented Valley Mountain Regional Center (VMRC).

Claimant appeared on his own behalf.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on January 23, 2019.

ISSUE

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

FACTUAL FINDINGS

1. Claimant was born in 1966. He is 53 years of age. He is currently in the custody of the San Joaquin County Sheriff, pending criminal prosecution. Prior to his current incarceration, claimant was living homeless. Claimant was referred for an eligibility review by the San Joaquin County Superior Court. Claimant now seeks services from VMRC under the Lanterman Act.

VMRC ELIGIBILITY REVIEW

2. VMRC conducted a review of claimant's eligibility for services. The eligibility review team included Barbara Johnson, Psy.D.; Umer Malik, M.D.; and Jennifer Copeland, VMRC Intake Coordinator. The eligibility review was based on available documentation and an interview of claimant by Jennifer Copeland. These are summarized, in relevant part, below.

3. Intake Interview, September 12, 2018: Jennifer Copeland conducted the intake interview at San Joaquin County Jail, where claimant is currently in custody. Claimant has previously been diagnosed with severe depression, and bipolar and schizoaffective disorders. He had not yet received medical attention at San Joaquin County Jail, and was not then receiving any medication. He reported auditory hallucinations. At one point during the interview, claimant asked Ms. Copeland whether she heard noises. There was some commotion and talking among inmates inside the jail. Ms. Copeland told claimant she heard the noise, and claimant responded that "it is hard to know if I was just hearing voices again."

4. Claimant was the youngest of 16 siblings. His parents were farm laborers, and he moved a lot throughout California and New Mexico during his childhood. His older brothers were highly involved with gangs and criminal activity. When he was six years of age, his older brothers forced him to sniff paint and gasoline. This created an

addiction, and he began to voluntarily sniff paint, paint thinner, gas, and glue. He was frequently truant from school beginning at age seven or eight. He attended school through ninth grade. Claimant was incarcerated numerous times as a juvenile since as early as age eight, and has served time in prison as an adult. Claimant attempted to earn a GED¹ while incarcerated, but was not successful because of difficulty with basic math skills. He also expressed difficulty with reading comprehension of certain court documents and news articles. Claimant has never lived independently as an adult. He has either been incarcerated or lived with his former wife or girlfriend. He has never been employed to earn an income. He was previously granted Social Security benefits due to mental health issues. Claimant has had anger and impulsivity issues which have caused him to make countless poor decisions over the years. More recently, claimant has found spiritual comfort and some peace through "reading the bible and coming to know the lord."

5. High School Transcript, 1980-81: VMRC obtained a partial copy of claimant's high school transcript from Stockton Unified School District. The transcripts indicate that claimant received "F" grades and earned zero credits.

6. Mental Health Evaluation, Deuel Vocational Institute, August 18, 2016: VMRC's eligibility review included an analysis of mental health records from facilities operated by the California Department of Corrections and Rehabilitation (CDCR). F. Martin, R.N., Ph.D., conducted a mental health evaluation and completed a mental health evaluation form on August 18, 2016. Dr. Martin noted on the form that claimant has normal cognitive functioning as designated by "NCF," indicating that she had conducted and/or reviewed cognitive tests that objectively measured claimant's level of cognitive functioning, and that claimant tested within the normal range. (See testimony

¹ General Equivalency Diploma.

of Barbara Johnson, Psy.D., Factual Finding 10.) Claimant's history of psychiatric medications includes Abilify, Wellbutrin, Zyprexa, and trazodone. This combination of medications is used to treat mood disorders and psychosis, including schizoaffective disorder. (See testimony of Barbara Johnson, Psy.D., Factual Finding 10.) Dr. Martin's Axis I diagnosis was "rule out" "provisional" schizoaffective disorder. Dr. Martin "deferred" an Axis II diagnosis, which under the DSM IV includes intellectual disability. The Axis V Global Assessment of Functioning (GAF) was 65 on a scale of zero to 100.

7. Mental Health Treatment Plan, Avenal State Prison, December 29, 2016: A mental health treatment plan was prepared in consultation with claimant at Avenal State Prison. The plan included the notation "NCF." Claimant's history and current DSM IV Axis I diagnosis included Mood Disorder, NOS [not otherwise specified], and Psychotic Disorder, NOS. Axis II diagnosis was deferred. The treatment plan was signed on December 29, 2016, by primary clinician J. Chavez, A.S.W.; psychiatrist L. Seng, M.D.; a correctional counselor; and claimant.

8. Mental Health Treatment Plan, Avenal State Prison, March 15, 2017: Psychologist Juliana Yam prepared a Mental Health Treatment Plan. The history of claimant's present illness included auditory hallucinations including hearing voices "telling me whether it's safe or not safe, the people or situations." The treatment plan included a continued prescription of Effexor to treat mood/anxiety symptoms, and Zyprexa to treat psychotic symptoms.

TESTIMONY OF BARBARA JOHNSON, PSY.D.

9. Dr. Johnson has been employed by VMRC as a psychologist since 2010. In her position with VMRC, Dr. Johnson participates in approximately five eligibility reviews per week. The eligibility review process includes an intake interview with the claimant; obtaining and reviewing relevant records; conducting any necessary psychological or cognitive testing; and consultation between the VMRC intake coordinator, the

psychologist, and a physician. VMRC did not conduct any psychological or cognitive testing of claimant.

10. In making their eligibility determination regarding claimant, Dr. Johnson and the eligibility review team followed the definition of "developmental disability" under the Lanterman Act and its related regulations. (See Factual Finding 12 and Legal Conclusion 3.) The CDRC mental health records indicate that claimant suffers from one or more psychiatric disorders, including schizoaffective disorder. Claimant's history of psychiatric medications includes Abilify, Wellbutrin, Zyprexa, and trazodone. This combination of medications is used to treat mood disorders and psychosis, including schizoaffective disorder. The CDCR mental health records also indicate that claimant has normal cognitive functioning, as designated by "NCF." Based on the mental health evaluation and other CDCR records, Dr. Johnson opined that claimant has normal cognitive functioning, which directly contradicts any claim that he has an intellectual disability. She also noted that claimant suffers from a psychiatric disorder, which is one of the exclusionary criteria regarding eligibility for services provided by VMRC. The GAF score of 65 indicates some impairment of functioning for reasons including claimant's psychiatric condition. Based on the available records and the intake interview of claimant, Dr. Johnson and the other members of the eligibility review team concluded that respondent does not have a developmental disability that would qualify him for services from VMRC under the Lanterman Act.

TESTIMONY OF CLAIMANT

11. Claimant has been in trouble his entire life. His mind has many problems. He has been a victim. He would rather have been born when there were no drugs. If he was released from custody, the situation would be worse because he is not getting better. He does not want to go out into the world where someone may try to kill him.

He wants to go to a place where there are no criminals. He has good morals. He has become very gentle, and means no harm to anybody.

DISCUSSION

12. Regional centers provide services to individuals who have a "developmental disability" as defined in the Lanterman Act. In order to qualify for services from VMRC, an individual must be diagnosed with one or more of the five developmental disabilities outlined in the Lanterman Act: intellectual disability, cerebral palsy, epilepsy, autism, and/or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.) In addition, the individual's functional limitations must be directly related to the developmental disability that qualifies the individual for services under the Lanterman Act. The definition of "developmental disability" does not include psychiatric disorders, learning disabilities, or conditions that are solely physical in nature and not associated with a neurological impairment. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

13. The evidence does not support a finding that claimant has a developmental disability as defined by the Lanterman Act and the related regulations. No evidence was presented and no argument was made that claimant has cerebral palsy, epilepsy, or autism. Regarding a potential intellectual disability, the CDCR mental health records state that respondent has normal cognitive functioning. The specific objective basis for this assertion is unknown, given that no cognitive testing results were introduced. Dr. Johnson was persuasive in her testimony, however, that the mental health evaluation would not include the NCF designation unless there had been cognitive testing to support the assertion that respondent has normal cognitive functioning, which directly contradicts any assertion that claimant has an intellectual

disability or a condition closely related to an intellectual disability. Moreover, the weight of the evidence is that claimant has a psychiatric disorder, which does not qualify as a disability under the Lanterman Act. The evidence does not support a finding that claimant's level of functioning is related to an intellectual disability. Rather, this is most likely substantially related his psychiatric condition. For all of these reasons, claimant is not eligible for services under the Lanterman Act.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he has a qualifying developmental disability. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for developmentally disabled individuals and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. An applicant is eligible for services under the Lanterman Act if he is suffering from a substantial developmental disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.) Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

4. As set forth in the Factual Findings as a whole, claimant did not establish that he has a qualifying developmental disability as defined by the Lanterman Act and the related regulations. Consequently, he did not establish that he is eligible for services and support from VMRC under the Lanterman Act. Claimant's appeal must therefore be denied.

ORDER

Claimant's appeal is DENIED. Valley Mountain Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATED: January 28, 2019

TIMOTHY J. ASPINWALL

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