

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018120859

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 11, 2018, in Los Angeles, California.

Karmell Walker, Fair Hearing Manager with the South Central Los Angeles Regional Center (Service Agency), appeared and represented the Service Agency.

Claimant's father¹ appeared and represented claimant as her authorized representative. Claimant was not present at the hearing.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

¹ This decision refers to claimant by party designation and to her family members by their relationship to claimant, and not by their respective names, in order to protect their privacy.

STATEMENT OF ISSUES

The issue in this case is whether claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act).²

EVIDENCE CONSIDERED

Documents. Service Agency's Exhibits 1-7.

Testimony. Laurie McKnight Brown, Lead Psychiatric Consultant to the Service Agency; claimant's father; claimant's grandmother; Monica Corona, the father's advocate; and Evelyn Saldana, claimant's therapist.

FACTUAL FINDINGS

1. Claimant is an 11-year-old girl living under the sole custody of her father. She has been diagnosed with Borderline Intellectual Functioning, Rule Out Attention Deficit/Hyperactivity Disorder (Inattentive type), Rule Out Post-Traumatic Distress Disorder, and Rule Out Mood Disorder.

2. Claimant exhibits deficits in daily living skills. For example, she needs to be reminded to take a bath, to brush her teeth, to wear a pad during her menstrual cycle, and to clean and remove wax from her ears. Claimant does not recognize danger when crossing the street, and adult care providers must hold her hand to cross. Claimant continues to urinate herself and her toileting skills are inadequate. She does not know the difference between the boys' and girls' restrooms and needs to be repeatedly shown basic hygiene. Her father and grandmother both testified that claimant "walks and talks like a baby" and they worry that she is prone to injury because she "does not know how to be careful," and does not know "the difference between good and bad."

² Welfare and Institutions Code sections 4500 et. seq.

3. Claimant attends fourth grade at Compton Avenue Elementary School in Los Angeles, California. She qualifies for special education services through the school district as a student with a Specific Learning Disability. Claimant requires one-on-one attention at school, and is unable to write in complete sentences and skips words. The school district is considering whether claimant might benefit from speech therapy services, but to date, those services have not been approved.

4. On August 10, 2018, the Service Agency determined that claimant had no developmental disability as defined in the Lanterman Act at Welfare and Institutions Code section 4512 and at California Code of Regulations, title 17, section 54000, and notified claimant's father that claimant was ineligible for regional center services. Claimant filed a request for fair hearing on November 9, 2018.

5. The Service Agency's interdisciplinary team made its determination after considering a psychological assessment completed on June 9, 2018, by Maritza Alvarez, Psy.D., a licensed clinical psychologist, and a psycho-social report completed by Jacqueline Aranda on February 14, 2018. Psychologist Alvarez evaluated claimant to assess the existence of any developmental disability, specifically Intellectual Disability and/or Autism Spectrum Disorder. She reviewed the Service Agency records and interviewed family for historical data. The father and grandmother reported that the Los Angeles County Department of Children and Family Services (DCFS) "removed claimant from her mother in 2016 due to child abuse and neglect." (Ex. 4, p. 016.)

6. Psychologist Alvarez administered the Wechsler Intelligence Scale for Children—Fifth Edition (WISC-V) to measure cognitive ability. Claimant scored in the "Extremely Low to Average" range. (Ex. 4, p. 017.) Psychologist Alvarez administered the Vineland Adaptive Behavior Scales—Third Edition (VABS-3) to measure claimant's daily living skills. Claimant scored 62, a low score falling below the normative mean of 100. (Ex. 4, p. 018.) Psychologist Alvarez administered the Gilliam Autism Rating Scale—Third

Edition (GARS-3) to screen for abnormalities in social interaction, restricted and repetitive behaviors, social communication, emotional responses, cognitive style, and maladaptive speech. Psychologist Alvarez noted, "[Claimant] does not present with characteristics that are typically seen in individuals with autism" and "her scores were relatively low in all areas with the exception of Social Interaction." (Ex. 4, p. 019.)

7. Psychologist Alvarez concluded that the results of all testing, "together with a review of available records, reported deficits, and observations [did] not support a diagnosis of Intellectual Disability or Autism" at the time of the evaluation. (Ex. 4, p. 020.)

8. During the intake meeting for the psycho-social report, the father informed the service coordinator that claimant "was physically abused by her mother and also suffered physical and sexual abuse by her mother's partner." (Ex. 7.) Claimant's parents separated when claimant was two years old, and she lost contact with her father after the separation. In 2016, after intervention by DCFS, the father was located and granted supervised visitations. The father was ultimately awarded sole custody and the mother is currently granted supervised visitations once per week for two hours. Claimant has a brother who suffers from "epilepsy, autism, developmental delays, schizophrenia and asthma." (Ex. 7, p. 0039.)

9. The Service Agency's interdisciplinary team also considered a subsequent psychological assessment completed by Andrew Kami, Ph.D., LMFT, a licensed psychologist, on September 21, 2018. Psychologist Kami administered the Wechsler Intelligence Scale for Children (WISC-IV) to evaluate claimant's cognitive processing. Her scores were "very deficient" in Verbal Comprehension Index, "within normal limits" in the Perceptual Reasoning Index, "very deficient" in the Working Memory Index, and "average" in the Processing Speed Index. (Ex. 3, p. 0010.) The psychologist administered the Conners' Continuous Performance Test – II (CPT-II) to evaluate claimant's attention. The psychologist noted, "Taken as a whole [claimant's] CPT-II results are suggestive of

no major issue with attention, impulsivity, or vigilance.” (Ex. 3, p. 0011.) Psychologist Kami did not diagnose claimant with autism or intellectual disability, but rather concluded:

[Claimant’s test results] may indicate some other issue has caused her to have a deficit in memory and experience based knowledge. Perhaps trauma or early psychological issues have prevented her ability to have an average score. Indeed, her history does indicate a number of concerning issues that would certainly make it difficult for any student to engage in school or otherwise learn. It is well understood that trauma can be a distracting or otherwise imposing issue that would make it difficult for someone to learn. Her scores relating to verbal comprehension generally indicate that she has difficulty learning. This may be due to a learning disorder, which as stated previously, she does have difficulty with or it may be due to some psychosocial/emotional issue that has made it difficult for her to develop at an appropriate rate related to information. (Ex. 3, p. 0013.)

10. The Service Agency’s interdisciplinary team also considered a prior psychological assessment completed by Jennie M. Mathess, Psy.D., a clinical psychologist, on May 23, 2016. At the time, claimant was eight years old. Psychologist Mathess administered the Autism Diagnostic Interview—Revised (ADI-R) and the Autism Diagnostic Observation Schedule—2nd edition (ADOS-2) to assess for Autism Spectrum Disorder. The results of the ADI-R indicated that “a diagnosis of Autism Spectrum

Disorder is not likely,” and “[claimant’s] overall score on the ADOS-2 was below the cutoff score for autism and autism spectrum and fell in the non-spectrum range.” (Ex. 5, p. 0024.) Psychologist Mathess administered the VABS-II to evaluate claimant’s adaptive functioning. Claimant scored “in the moderately low range in all areas.” (Ex. 5, p. 0025.) The psychologist administered the WISC-V to evaluate claimant’s cognitive processing. Claimant scored in the borderline range. Psychologist Mathess concluded that “a diagnosis of Intellectual Disability is not indicated,” and that claimant “[did] not meet criteria for Autism Spectrum Disorder.” (*Id.*)

11. The Service Agency’s interdisciplinary team also considered a prior psychological evaluation completed by Rebecca R. Holtzman, Psy.D., a licensed psychologist, on April 6, 2015. At the time, claimant was seven years, nine months old. Psychologist Holtzman evaluated claimant to assess her then-current level of cognitive, adaptive, and social functioning to assist the Service Agency in determining regional center eligibility. In clinical observation, claimant “exhibited consistent eye contact ... [and] a full range of facial expressions,” whereas she “did not demonstrate repetitive or stereotypical behaviors” and “no unusual interests or preoccupations were apparent.” (Ex. 6, p. 0030.) Laurie McKnight Brown, the lead psychological consultant to the Service Agency, credibly testified that these observations were inconsistent with a finding of autism because a child with autism would have difficulties with social reciprocity. Psychologist Holtzman administered the WISC-IV, the VABS-II, the ADI-R, and the Beery Buktenica Developmental Test of Visual-Motor Integration (VMI). The psychologist noted, “The results of this assessment indicated that [claimant] does not meet diagnostic criteria for Autism Spectrum Disorder.” (Ex. 6, p. 0033, emphasis in original.)

12. At the hearing, claimant presented no medical evidence to establish that she has been diagnosed with intellectual disability, cerebral palsy, epilepsy, or autism. Claimant’s therapist testified that claimant may qualify under the “fifth category” based

on her deficits in self-care, learning, capacity of independent living, and self-direction. (See Legal Conclusion 5.) The therapist's opinion was based on her observations treating claimant once per week, her information and belief that claimant was diagnosed with post-traumatic stress disorder (PTSD), and claimant's history of substantial abuse. However, the therapist's opinion was not supported by any evidence to show that claimant has a disabling condition closely related to intellectual disability, or that she has a disabling condition that requires treatment similar to that required for individuals with intellectual disability.

13. Psychologist Brown testified at hearing that all evaluations and assessments demonstrate that, although claimant's verbal scores were not strong, her performance scores were strong and that she was 'pretty well developed' in visual functioning. She credibly and competently testified that the Service Agency properly considered all previously completed evaluations in making its determination. In the case of Mr. Kami's written evaluation, dated after the initial adverse determination, the opinions expressed by Mr. Kami are consistent with and affirm the Service Agency's adverse determination.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The burden is on claimant to demonstrate that she is entitled to regional center services, and that the Service Agency's determination of ineligibility is incorrect. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) At any point, a failure to satisfy a requirement for eligibility by a preponderance of the evidence will result in a conclusion of ineligibility. (Evid. Code, § 115.)

2. In order to be eligible for regional center services, claimant must have a developmental disability. (Welf. & Inst. Code, § 4512, subd. (a).) To establish that she has

a “developmental disability,” claimant must first prove that she suffers from a qualifying disability. Certain conditions are expressly excluded from the definition of a developmental disability. Specifically, conditions that are solely physical in nature do not qualify. (Welf. & Inst. Code, § 4512, subd. (a).) Also, psychiatric disorders alone and learning disabilities alone are not qualifying conditions. (Cal. Code. Regs., tit. 17, § 54000.) However, the regulations do not deny services to a claimant with a learning disability or psychiatric disorder, so long as the claimant can also establish a qualifying condition under the Lanterman Act. (*Samantha C. v. Department of Developmental Services* (2010) 185 Cal.App.4th 1462.)

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3. If claimant suffers from a qualifying disability, the evidence must then show that the condition meets each of the following elements:

- (A) The disability originated before claimant attained age 18;
 - (B) The disability is likely to continue indefinitely; and,
 - (C) The disability constitutes a substantial disability for claimant.
- (Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. A developmental disability is presumed with evidence of any of the following four diagnoses: intellectual disability, cerebral palsy, epilepsy, or autism. (Welf. & Inst. Code, § 4512, subd. (a).) In this case, four psychologists assessed claimant and each psychologist observed deficits in learning and memory. However, none determined that claimant has intellectual disability, cerebral palsy, epilepsy, or autism. Psychologist Kami noted that claimant’s deficits may be caused by factors other than a qualifying condition, such as the trauma claimant sustained as the result of substantial child abuse. Accordingly, claimant has failed to prove by a preponderance of the evidence that she has been diagnosed with any of the four presumed grounds for eligibility.

5. Claimant may nonetheless qualify under a fifth category in two ways: (a) if she has a disabling condition closely related to intellectual disability, or (b) if she has a disabling condition that requires treatment similar to that required for individuals with intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).) Fifth category eligibility is broad, encompassing unspecified or undiagnosed conditions and disorders. However, this broad language is not intended to allow unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior who would benefit from regional center services. Establishing eligibility under the fifth category does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability (e.g., reliance on intelligence quotient (IQ) scores). Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with intellectual disability.

6. Moreover, a qualifying developmental disability under the fifth category requires "treatment similar to that required for individuals with an intellectual disability." (*ibid.*) "The statutory definition does not include disabling conditions requiring similar services" because the Lanterman Act distinguishes between "treatment" and "services" as two different types of benefits available under the statute. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 98.)

7. In this case, after undergoing four separate psychological evaluations and appropriate testing, claimant failed to meet the criteria for autism or Autism Spectrum Disorder. Moreover, claimant exhibited behaviors inconsistent with autism by making consistent eye contact, having a full range of facial expressions, demonstrating no repetitive or stereotypical behaviors, and giving no appearance of unusual interests or preoccupations. Although the testimonial evidence established that claimant suffers

from deficits in self-care, learning, and self-direction, no competent medical evidence was presented to show that claimant's condition is closely related to intellectual disability. Although testimonial evidence showed that claimant would benefit from regional center services, no evidence was presented to show that her condition requires treatment similar to that required for individuals with intellectual disability. (*Samantha C. v. Department of Developmental Services, supra.*, 185 Cal.App.4th 1462; *Ronald F. v. State Dept. of Developmental Services, supra.*, 8 Cal.App.5th 84, 98.)

8. Overall, the evidence is insufficient to show that claimant has a qualifying disability, resulting in a conclusion of ineligibility without the need to examine whether the condition is likely to continue indefinitely or whether the condition is a substantial disability. As claimant matures, she may learn to adapt or, if not, further assessments may provide clarity about the cause of her developmental delays. In the latter case, claimant is not barred from seeking regional center services at a later date. However, claimant has failed to meet her burden to show by a preponderance of the evidence that she currently has a developmental disability under Welfare and Institutions Code section 4512, subdivision (a). Accordingly, claimant is ineligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal is denied. Claimant is ineligible for regional center services under the Lanterman Act.

DATED:

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.