

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2019020674

DECISION

This matter was heard before Karen Reichmann, Administrative Law Judge, State of California, Office of Administrative Hearings, on June 7, 2019, in San Jose, California.

This matter was consolidated for hearing with OAH Case No. 2019020680.

James Elliott represented San Andreas Regional Center (SARC), the service agency.

Claimant was represented by his parents.

The record closed, and the matter was submitted for decision on June 7, 2019.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

INTRODUCTION

1. Claimant is three years old. Claimant lives with his parents, an older sister, and a twin sister. Both sisters have been diagnosed with autism spectrum disorder. His

older sister is a SARC consumer. Claimant's twin has also been denied services, and her appeal was consolidated for hearing with claimant's appeal.

2. Claimant and his twin were born prematurely. Both received services from the Early Start Program at SARC, which provides services for children under the age of three who are at an increased risk for developing a developmental disability.

3. As claimant approached his third birthday, SARC arranged for him to be assessed by Ubaldo F. Sanchez, Ph.D., on November 30, 2018, to determine whether he is eligible for regional center services. Dr. Sanchez administered a variety of diagnostic tools. Claimant scored in the low average range of intelligence. Dr. Sanchez observed that claimant used a limited vocabulary for expression and that his speech is difficult to understand. Dr. Sanchez found that claimant's ability to communicate is moderately to markedly impaired, that his ability to integrate with peers and adults is mildly impaired due to his speech delays, and that his ability to engage in and sustain an activity for a period of time is moderately impaired.

Dr. Sanchez concluded that claimant does not meet the DSM-5¹ criteria for autism spectrum disorder. Dr. Sanchez made the following DSM-5 diagnoses: 1) Other Specified Neurodevelopmental Disorder (attributed to premature birth) and 2) Language Disorder. Dr. Sanchez recommended speech, occupational and physical therapy. Dr. Sanchez also recommended that claimant be monitored by the school district and be reassessed in two to three years.

4. On February 7, 2019, Monica Cosio Martinez, M.S.W., District Manager of the Early Start Program, notified claimant's parents that a clinical team had determined

¹ The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) is published by the American Psychiatric Association and provides diagnostic criteria for neurodevelopmental disorders, including autism spectrum disorder.

that there was no evidence that claimant has a substantial developmental disability.

5. A Fair Hearing Request was filed on February 13, 2019.

KAISER DIAGNOSIS AND TREATMENT

6. Claimant was assessed at the Kaiser Autism Spectrum Disorder Center in San Jose on January 7, 2019, by Sarah Burton, Psy.D., and James (Taylor) Thatcher, Psy.D. The Kaiser team noted that claimant demonstrated average cognitive abilities, below average receptive and expressive speech abilities, and varied adaptive skills, with a weakness in social-emotional skills. The Kaiser team concluded that claimant met the diagnostic criteria of the DSM-5 for Autism Spectrum Disorder, Level 1².

7. Claimant was subsequently evaluated by ACES, a provider of Applied Behavior Analysis (ABA) services. The ACES evaluator recommended that claimant receive 25 hours per week of ABA services, and Kaiser agreed to fund this level of service. Claimant's parents explained their concern that they will have difficulty paying co-payments for ABA services. Because claimant's older sister is a SARC consumer, she qualified for Medi-Cal, which pays the co-payment for her ABA services.

DR. ELLIS'S TESTIMONY

8. Azelin Ellis, Psy.D., testified on behalf of SARC. Dr. Ellis has been employed as clinical psychologist at SARC for approximately four years. Dr. Ellis worked as an ABA therapist and as an ABA supervisor earlier in her career.

² As set forth in the DSM-5, Level 1 means the individual requires "support." This is differentiated from Level 2, which signifies the individual requires "substantial support," and Level 3, which signifies that the individual requires "very substantial support."

Dr. Ellis reviewed the reports of Dr. Sanchez and the Kaiser team, and also reviewed assessments that were performed as part of the Early Start Program. Dr. Ellis did not personally evaluate claimant. Dr. Ellis noted that the various reports do not demonstrate that claimant is substantially impaired. She noted that the Early Start assessment reflected some mild to moderate delays, but did not reflect substantial delays in learning capacity, self-care, self-direction, gross motor skills, or communication. Dr. Sanchez's report similarly did not reflect any substantial delays. Finally, Dr. Ellis noted that a Level 1 autism spectrum disorder diagnosis would not typically establish eligibility for regional center services.

Dr. Ellis concluded that claimant does not satisfy the criteria for regional center eligibility at this time, but acknowledged that claimant would benefit from services to address his mild to moderate delays and behavioral issues.

PARENTS' TESTIMONY

9. Claimant's parents testified that in their experience, claimant's condition is severe. They described the ongoing challenges of managing claimant's behavior. Claimant has frequent temper tantrums and screaming fits. He clings to his parents and has difficulty with separation. Claimant has no sense of danger and has injured himself from reckless behavior, including fracturing both legs jumping off a swing. Claimant has difficulty falling asleep. He has to be encouraged to speak, and prefers to communicate mainly by grabbing people and gesturing.

Claimant's parents hold him down in order to brush his teeth. Claimant is not toilet trained, despite his parents' practice of placing him on the toilet hourly. Claimant will feed himself independently to some extent, but his parents also spoon feed him to make sure he gets enough to eat.

10. Claimant's parents acknowledged that there are children who are more impaired than he is. However, they firmly believe that he needs support and intervention

in order to succeed. The family is struggling due to the demands of their three behaviorally challenging children.

LEGAL CONCLUSIONS

1. 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 the developmentally disabled, 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.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. A developmental disability is a “disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.” The term “developmental disability” includes autism. (Welf. & Inst. Code, § 4512, subd. (a).) Pursuant to section 4512, subdivision (l), the term “substantial disability” is defined as “the existence of 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: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency.” The last two major life activities are generally not taken into account when assessing very young children such as claimant.

3. It is claimant’s burden to prove that he has a developmental disability, as that term is defined in the Act.

4. The evidence established that claimant has been diagnosed at Kaiser with

autism spectrum disorder, a developmental disability. The Kaiser diagnosis is for Level 1 autism spectrum disorder, which does not reflect a finding of significant limitations. Other evidence in the record reflected only mild to moderate delays. Claimant has not demonstrated a substantial impairment in any of the relevant major life activities, as measured against what would be appropriate for a child his age.

5. Claimant has failed to meet his burden of establishing that he is eligible for regional center services at this time, notwithstanding the fact that he has been diagnosed with autism spectrum disorder by his medical providers.

ORDER

The appeal of claimant is denied. Claimant is not eligible for regional center services.

DATED:

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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