

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019080255

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 29, 2020. The matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885.

Monica Munguia, service coordinator, represented the North Los Angeles County Regional Center (regional center or service agency). Mother represented claimant. The names of claimant and his family are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 29, 2020.

STATEMENT OF THE CASE

Claimant improved substantially, including in his receptive and expressive language skills and social adaptation, while receiving services in the Early Start Program. He started in the program when he was approximately two and a half years old. Like all participants, he became ineligible when he turned three years old. As recommended by program providers, claimant continued to receive services, but from the school district. Claimant continued to improve in some areas, but he also continued to show delays of several kinds. Mother believes that claimant, now 12 years old, suffers from autism or Autism Spectrum Disorder (ASD). No physician or psychologist has diagnosed claimant with ASD, however. Evaluations by the service agency and others did not show that such a diagnosis is appropriate, or that claimant is otherwise eligible for services under the Lanterman Act.

ISSUES

Whether claimant may be eligible for services under the Lanterman Act by reason of ASD or some other condition.

SUMMARY OF DECISION

The service agency's Interdisciplinary Eligibility Committee evaluated claimant for eligibility. The committee included personnel from various disciplines, including licensed psychologist Sandi J. Fischer, who provided extensive testimony at the hearing. They looked for any condition that might make claimant eligible for services, concentrating on ASD in light of mother's statements. They found that claimant does not suffer from ASD or any other condition that would make him eligible for services

under the Lanterman Act. Mother's evidence was unsupported by expert evidence and was insufficient to carry claimant's burden of proof.

FINDINGS OF FACT

1. On June 13, 2019, the service agency sent claimant and his mother a notice of proposed action (NOPA). The NOPA stated that following claimant's evaluation, assessment of information, and a meeting of the service agency's Interdisciplinary Eligibility Committee, claimant was found ineligible for services.

2. On August 2, 2019, claimant requested a fair hearing to appeal the NOPA.

3. Claimant is 12 years old. He lives at home with his mother, father, and older siblings.

Dr. Fischer's Testimony on the Service Agency's Behalf

4. Sandi J. Fischer, Ph.D., the service agency's Co-Supervisor of Clinical and Intake Departments, testified at length.

A. Dr. Fischer is a psychologist who has been licensed in California since 1990. Her Curriculum Vitae is Exhibit 2. She reviewed evaluations of and reports on claimant and observed him at school, all as described below.

B. Dr. Fischer's testimony relied not only on reports and evaluations, but on psychological data and treatises. She explained, for instance, how the skills of the vast majority of the population may be considered to fall in the broad midsection of a bell curve, depicted in Exhibit 5, whereas those of exceptional and those of very poor ability are at the bell curve's extremes. She also made reference, as did other

psychologists in their evaluations, to the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5), pertinent excerpts of which are in Exhibits 3 and 4.

C. Dr. Fischer concluded, in agreement with other members of the service agency's Interdisciplinary Eligibility Committee, that claimant did not meet eligibility criteria under the Lanterman Act and was consequently ineligible for services.

5. When claimant was approximately two and a half years old, mother expressed concern about claimant to his physician, Rosa M. Del Valle, M.D. Mother mentioned his lack of expressive skills and his not interacting with other children. Observing developmental delays, Dr. Del Valle referred claimant to the Early Start Program at the service agency.

6. On a date not established, an Early Intervention Services Intake Application, Exhibit 7, was submitted to the service agency on claimant's behalf.

7. Exceptional Children's Foundation (ECF) is among the service agency's vendors. ECF had claimant evaluated by professionals in various professions to determine his eligibility for Early Start.

A. Veronica Barrera wrote an April 26, 2011 Initial Developmental and Speech Evaluation, Exhibit 8: "[Claimant] was evaluated at ECF's Arleta site with the use of The Revised Gesell Developmental Schedules, The Communication Evaluation Chart from Infancy to Five Years and Oral Motor Screen. Observations as well as parental interview were used to obtain estimated developmental levels on [claimant]."

B. Claimant was 30.5 months old. His expressive and receptive language skills were evaluated to be equivalent to a child of 11 months. Claimant's gross motor skills were measured as his most highly developed, though still significantly below his chronological age, equivalent to those of a child 20 months old.

C. Recommendations included speech therapy and “[e]nrollment in a center based program due to concerns in [claimant’s] overall development and inability to socialize with peers in a natural environment.”

D. Evaluations contributing to ECF’s initial evaluation were:

i. An April 26, 2011 Speech and Language Evaluation, Exhibit 9, by licensed Speech and Language Pathologist Rebecca O’Brien.

ii. A June 17, 2011 Occupational Therapy (OT) Evaluation, Exhibit 11, by licensed Occupational Therapist Ludivina Gutierrez, in which she found that claimant “demonstrates behaviors indicative of difficulty processing auditory and visual input as he requires bombardment of input to be able to attain a high neurological threshold that allows for information to be registered and processed.”

8. Based on the initial evaluation, the service agency prepared an Early Start Services Individualized Family Service Plan (IFSP), Exhibit 10, outlining developmental goals and services, including in-home services, to be provided claimant for the six months he would remain eligible under the Early Start program.

9. ECF prepared a Developmental Assessment, Exhibit 12, when claimant was 32 months old and had “good attendance” in the three-day center based program for approximately two months: “[Claimant] is learning to sit well in circle time but is not yet imitating finger play songs. He transitions well from one activity to another. He requires guidance to complete tasks. Richard is making good eye contact and has a good attention span. Richard tends to stay close to mother and is not interacting with other children in the program.” The evaluation gives these estimates of claimant’s developmental levels as of June 30, 2011: “Adaptive: 27 months [¶] Gross Motor: 30 months [¶] Fine Motor: 32 months [¶] Language: 20 months [¶] Personal-Social: 18

months." There were several recommendations, including that claimant "continue receiving weekly child development services to enhance his overall development."

10. A June 30, 2011 letter, Exhibit 13, from Lori Sivazlian at ECF to Adriana Moratinos at the service agency indicated that there were some difficulties in communicating with mother and consequently in providing claimant in-home services. Other parts of the IFSP were implemented in the meantime.

11. The service agency prepared a July 21, 2011 IFSP Transition Plan, Exhibit 14. Such plans provide parents information on any Local Education Agency (LEA) and other community programs that might provide resources for a successful transition from the Early Start program. Like other participants, claimant was to become ineligible for the program upon his third birthday under section 52112, California Code of Regulations, title 17 (Regulations).

12. Claimant is the subject of a Psycho-Educational Assessment Team Report, Exhibit 37, and a Language and Speech Assessment Report, Exhibit 38, at the Los Angeles Unified School District (LAUSD). Based on these assessments, LAUSD found claimant eligible for Special Education services due to a Developmental Delay.

13. An August 25, 2011 Occupational Therapy Assessment Report, Exhibit 39, by LAUSD noted that claimant "did not present with any sensory stimming." His level of arousal was "adequate" and he "was able to transition between activities without upset, and followed a two-step direction. . . . When given a choice of two different activities or toys, he was able to pick one within an expected amount of time. . . . He did not persevere on actions." Mother reported that claimant was clumsy, avoided others, and was sensory seeking but this was not observed during the assessment. [Claimant] climbed on structures and was not afraid of movement or heights. He was not recommended for Occupational Therapy.

14. An Individualized Education Program (IEP) meeting took place at an LAUSD school on August 24, 2012, at which it was noted that claimant made friends and adjusted well to school, meeting previous IEP goals in the areas of Articulation, Social Skills, and School Readiness. Claimant's social and emotional skills were considered appropriate to his grade level. Claimant continued to make articulation errors and did not speak in longer sentences. He had some trouble with counting and his letter recognition skills were not well developed. He needed cueing and teacher assistance to participate in some group activities. But he had no gross motor issues. As a Special Education student with a Developmental Delay, claimant was placed in a Preschool Mixed Program for 480 minutes per week with 60 minutes per month of Language and Speech Therapy.

15. To evaluate claimant for regional center services, California-licensed psychologist John Lamont, Ph.D., wrote a September 28, 2011 psychological assessment, Exhibit 17.

A. Dr. Lamont observed that "[claimant] makes good eye contact. He plays with a toy dinosaur and pretends to fight with it. He is responsive and cooperative. He says 'Bear' when presented with a puzzle that forms a bear. He imitates movements made by the examiner. When presented with a Jack-in-the-box he shares enjoyment with his mother and with the examiner several times. He smiles often. When the movements of toy frogs are demonstrated for him he imitates them, and shares enjoyment again. He smiles when a large doll baby is presented and pretends to feed it and cover it for sleep. He shares enjoyment again."

B. Dr. Lamont assessed respondent for autism: "The items comprising the scoring algorithm of the Autism Diagnostic Interview - Revised (ADI-R) were administered with [claimant's] mother as respondent. The results are scored in accord

with DSM-IV-TR [Diagnostic and Statistical Manual of Mental Disorders, fourth edition, text revision] criteria for Autistic Disorder. He scored at the cutoff scores for Autistic Disorder in one area. Communication. However, he scored below the autism cutoff in the areas of Reciprocal Social Interaction and Restricted, Repetitive and Stereotypic Patterns of Behavior. [Claimant] was also administered the Autism Diagnostic Observation Schedule [{ADOS}], an observational measure designed to elicit and quantify overt behaviors characteristic of autism. On this scale, [claimant's] score was below that required to suggest a diagnosis of Autistic Disorder by DSM-IV-TR criteria. The ADOS is scored only on the basis of currently observed behavior."

C. Using the Wechsler Preschool and Primary Scales of Intelligence – III, Dr. Lamont found claimant's Full Scale IQ was 96.

D. Dr. Lamont's summarized his diagnostic impression: "A diagnosis of Autistic Disorder requires six of . . . twelve diagnostic criteria . . . , with at least two in the area of social interaction and one each in the areas of communication and restricted/repetitive activities. Since [claimant] has only two of the twelve diagnostic criteria above, he does not qualify for a diagnosis of Autistic Disorder. The lack of a severe and pervasive impairment in the development of reciprocal social interaction (defined as the presence of at least two of the diagnostic criteria in that category) also precludes a diagnosis of Pervasive Developmental Disorder NOS [not otherwise specified] or of Asperger's Disorder." Dr. Lamont diagnosed: "AXIS I: Mixed Receptive-Expressive Language Disorder (315.32)"

16. Claimant's developmental progress in language is reported in the October 19, 2011 Discharge Report for Speech Therapy, Exhibit 15, by Speech and Language Pathologist Rebecca O'Brien and Speech and Language Pathologist Assistant Elizabeth Sanchez. They found "[b]ased upon . . . parent interview, and direct

observations, [claimant, 36 months old] is functioning at the following language levels: Receptive Language is at approximately 36 months of age. [¶] Expressive Language is at approximately 30 months of age.” They noted further and more concretely: “[Claimant] has demonstrated a progressive Improvement in the area of expressive language. He uses one-to-four words frequently to express his needs/wants. . . . [¶] [Claimant] has demonstrated a progressive improvement in the area of receptive communication. Instructions such as, ‘find the turtle, repeat the modeled utterance, and then give the turtle to your brother/sister’ are followed with minimal prompting.”

17. Mother again sought regional center services in early 2013.

A. A January 15, 2013 Social Assessment by the service agency noted that mother was concerned claimant had speech delays, lacked safety awareness, and was hyperactive.

B. Dr. Fischer addressed mother’s concerns in part with a March 11, 2013 Pre-School Observation, Exhibit 22: “It was decided that a school observation would provide additional information about [claimant’s] behavior since he was recently assessed. . . . [Mother] reported concerns about [claimant's] behavior at home which was not observed in the school setting. Additionally, [claimant's] teacher and speech therapist did not report the types of difficulties reported by [mother].”

C. Dr. Fischer described claimant’s behavior at school in considerable detail, for instance, claimant’s speech therapist at school: “pointed to a picture and asked [claimant] to describe it. He said, ‘Brushing teeth with water’ which was correct. She pointed at another part of a picture and asked, ‘What’s funny?’ [Claimant] said, “bunny” (slippers) which was correct. [Claimant] then stood up so that he could see the girl's picture. He then asked for direction from the speech therapist, ‘Put it on top?’

meaning should he put the new picture on top of the place on the house that showed the same picture. She said, 'Yes' and he followed her direction."

D. Dr. Fischer's School Assessment concluded: "In order to receive a diagnosis of Autistic Disorder, one must have a qualitative impairment in at least six of the twelve symptoms including at least two in the area of Social Interaction and at least one each in the areas of Communication and Restricted Repetitive and Stereotyped Patterns of Behavior. [Claimant] did not exhibit any symptoms of a Pervasive Developmental Disorder. He has a history of a delay in language although his speech therapist indicated that it is expected that [claimant] will be dismissed from Language and Speech because he no longer qualifies for the service."

18. The service agency's April 3, 2013 Eligibility Determination, Exhibit 23, found claimant ineligible for services. The determination was based on record reviews and on: (i) a January 29, 2013 medical examination by Margaret Swaine, M.D., the service agency's Supervisor of Medical Services; (ii) Dr. Fischer's January 15, 2013 psychological evaluation; and (iii) a March 11, 2013 psycho-social evaluation by Intake staff member Almira Afshari. The service agency advised mother of the determination by letter dated April 9, 2013, Exhibit 24.

19. In 2018, claimant applied for services again, by means of a request, Exhibit 25, which the service agency received on December 19, 2018. As stated in the Initial Intake Determination, Exhibit 26, the service agency arranged for claimant's evaluation by California licensed clinical and forensic psychologist Efrain A. Beliz, Jr., Ph.D.

20. Dr. Beliz evaluated claimant on April 29 and May 10, 2019.

A. Evaluating cognitive functioning, Dr. Beliz wrote: "[Claimant's] performance on the WISC-V [the Wechsler Intelligence Scale for Children, fifth edition] suggests low average to average intelligence. Scaled Scores ranged from 5 on Digit Span and Picture Span to 10 on Block Design. [Claimant] had a difficult time on tests measuring working memory. He performed best on nonverbal tests measuring nonverbal concept formation. [Claimant's] performance does not suggest cognitive delay but suggests problems with attention and concentration."

B. Dr. Beliz administered the ADOS-2, the second edition of the ADOS, finding in part: "[Claimant] does not use stereotyped words or phrases. Eye contact and reciprocal conversation are absent. Facial expressions and shared enjoyment are limited. Social overtures were very limited. [Claimant] did not make an effort to include the examiner in conversation or joint activity. The overall quality of social response, communication, and rapport are below average."

C. Regarding adaptive functioning, Dr. Beliz wrote in part: "Social skills are mildly impaired. [Claimant] is affectionate towards family members. He recognizes emotions in others and acknowledges positive comments made by familiar adults. [Claimant] does not make eye contact. He has friends at school and plays with peers at church events."

D. Concluding his evaluation, Dr. Beliz's findings included: "[Claimant] is a mild-mannered and quiet Hispanic child with normal intelligence and borderline to mildly impaired adaptive skills. There is no evidence for cognitive delay. Although problems with attention and concentration are suggested by his performance on the WISC-V, there was no additional evidence for ADD or ADHD. [Claimant] has been evaluated and observed in school settings over the years by various professionals. In each case he has been observed to interact and play with

peers. . . . [¶] . . . [Claimant] does not meet criteria for Developmental Disorder or Autism Spectrum Disorder.”

21. The service agency’s June 5, 2019 Social Assessment, Exhibit 27, found: “[Claimant] does not care to have friends. . . . [Claimant] has been suspended from school for being aggressive towards others. Mother reports that [claimant] fights with his siblings. He does not measure danger. . . . He does not like settings with lots of people. He can have a reciprocal conversation. Mother states that the school no longer has an IEP for him. She does not know why they took him out of special education.”

22. The service agency’s June 12, 2019 Eligibility Determination, Exhibit 30, found claimant ineligible for services. The service agency advised parents of the determination by letter dated June 13, 2019, Exhibit 31.

23. Claimant applied for services again by request, Exhibit 32, which the service agency received on August 6, 2019.

24. In evaluating eligibility, Dr. Fischer went to claimant’s school for a second observation on January 22, 2020.

A. Dr. Fischer had reviewed pertinent school records: “[Claimant’s] progress report from the first reporting period of fourth grade during the 2018-2019 school year indicated that he earned 3s (meets grade level standards) in all areas but “Language Conventions, Effective Use, Vocabulary which was rated as a 2 (Progressing Toward Meeting Grade Level Standards.) He was rated as Consistent (highest level) in “effectively communicates and collaborates,” “understands other perspectives,” and “thinks critically, solves problems creatively and values evidence” which are areas that would be most associated with problems for a child with an Autism Spectrum Disorder.”

B. As before, Dr. Fischer described her observations of claimant at school in considerable detail. For instance, she observed that claimant “continued to be attentive and listen. Mrs. Hoogveld [the teacher] worked on another problem and the answer was $1\frac{2}{5}$ which [claimant] said after others had come up with the answer. (It seemed that he worked out the answer but needed slightly more time than some of his classmates.) . . . [S]he told them to ‘work with a partner for the next one (problem.)’ [Claimant] . . . then worked with the male student seated next to him. He looked at the boy’s paper and then the boy looked at his paper. They were talking and working cooperatively.”

C. Dr. Fischer interviewed Ms. Hoogveld, who: “confirmed that [claimant] is a full-time student in her general education fifth grade class. He does not receive—nor need—any Special Education supports. She stated that he is a ‘very, very, very bright student.’ Mrs. Hoogveld described [claimant] as a ‘likeable and liked’ student who has ‘great social skills.’ She stated that he is part of leadership at their school. [¶] Mrs. Hoogveld reported that ‘morning’s are a struggle’ for [claimant] and he is late getting to school on a daily basis (which was also noted during fourth grade.) At school, [claimant] is generally well behaved but approximately “5%” of the time, [claimant] becomes ‘angry and has tantrums’ during which he might ‘bang his head.’ She stated that when he is ‘really upset, he will shut down.’”

D. Dr. Fischer summarized her diagnostic impressions: “A review of [claimant’s] records, classroom observation and teacher interview DO NOT support the presence of an Autism Spectrum Disorder or any other developmental disability.”

25. The service agency’s January 29, 2020 Eligibility Determination, Exhibit 34, found claimant ineligible for services.

Claimant's Evidence

26. Mother offered no documentary evidence and was the only witness to testify in support of claimant's appeal. She expressed her worry that claimant was not doing well in school and unable or unwilling to behave well at home. She acknowledged that no medical professional had diagnosed claimant with autism.

PRINCIPLES OF LAW

1. The requirements for eligibility for services under Lanterman Act section 4512, subdivision (a), are:

A. A developmental disability that originates before the claimant turns 18 and is expected to continue indefinitely;

B. A disability attributable to a condition under one of five categories: (i) intellectual disability, (ii) cerebral palsy, (iii) epilepsy, (iv) autism (this term is used here interchangeably with ASD), and (v) disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectual disability, excluding however handicapping conditions that are solely physical.

C. The disability must be substantial. Under Lanterman Act section 4512, subdivision (j)(1), "'Substantial disability' means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a service agency, and as appropriate to the age of the person: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency."

2. Claimant bears the burden of proof.

A. An applicant who seeks to establish eligibility for government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].)

B. Regarding eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS and RC [regional center] professionals and their determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

C. Under Evidence Code section 115, the standard of proof is the preponderance of the evidence, "Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, italics in original.)

ANALYSIS

1. There was no evidence that claimant is disabled by reason of cerebral palsy or epilepsy, two of the conditions eligible for services.

2. There is little evidence that claimant might have a substantial developmental disability by reason of intellectual disability. When claimant was about two and a half years old, his physician noted delays in his development and therefore referred him to the service agency. In initial evaluations, claimant was considered to

have significant delays. But with the benefit of the Early Start program, he showed significant improvement. Later Dr. Lamont found claimant's Full Scale IQ was 96, about average. Claimant was placed in special education classes for a time and benefitted from speech therapy for part of the school day. More recently he has been able to attend a general education class and reports indicate he is able to follow the curriculum. Claimant's later difficulties with school do not appear fairly attributable to intellectual disability or any other developmental delay.

3. Professionals who have evaluated claimant over the years for autism, or, as the condition is named in the DSM-5, ASD, have repeatedly found that claimant is not autistic. Like many other children, claimant at times encounters difficulties at school, as his teacher, Ms. Hoogveld, described in her interview with Dr. Fischer. But the evidence does not suggest that such difficulties amount to the sort of substantial disability required for eligibility under the Lanterman act.

4. There was no substantial evidence that claimant might be eligible under the fifth category under Lanterman Act section 4512, subdivision (a). There is no evidence of any consequence that claimant suffers from disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectual disability.

CONCLUSION OF LAW

There is no substantial or convincing evidence demonstrating that claimant is eligible for services under the Lanterman Act by reason of ASD or any other condition.

ORDER

Claimant's appeal of the denial of services from the North Los Angeles County Regional Center is denied.

DATE:

THOMAS Y. LUCERO

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.