BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

NORTH BAY REGIONAL CENTER, Service Agency.

OAH No. 2019090812

PROPOSED DECISION

Karen Reichmann, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on November 17, 2020, by videoconference.

Claimant was represented by his mother. Claimant was not present.

Jake Stebner, Attorney at Law, represented North Bay Regional Center (NBRC).

The record remained open for the submission of closing statements, which were timely received and considered. The record closed and the matter was submitted for decision on November 23, 2020.

ISSUE

Is claimant eligible for regional center services based on autism spectrum disorder (ASD)?

FACTUAL FINDINGS

1. Claimant is an adult male in his 30's. He seeks regional center eligibility based on a recent diagnosis of autism/ASD.

2. On August 20, 2010, NBRC issued a Notice of Proposed Action to claimant notifying him that his request for eligibility was denied.

3. Claimant timely submitted a Fair Hearing Request, and this hearing followed.

Claimant's Background

4. Claimant has four siblings, including a younger brother with ASD who is a regional center client.

5. Claimant met early developmental milestones. Claimant received extra resources at school for math and reading, but did not receive special education services. He graduated high school in 2000.

6. Claimant's mother became concerned about claimant's social skills when he was 11 or 12. Claimant began experiencing manic episodes when he was in his teens. He has been diagnosed with panic disorder, attention deficit hyperactivity disorder (ADHD), bipolar disorder, and schizoaffective disorder. He has also been

diagnosed with chronic pain and fibromyalgia. Claimant takes prescription medications for his psychiatric conditions.

7. Claimant has an avid interest in religion, which has included spending time in residence at a monastery. He is also very interested in art.

8. As an adult, claimant has been unable to maintain employment. He lives on his own in an apartment with support from an organization that assists individuals with mental illnesses. He also requires significant support from his family for activities of daily living. Claimant's sister serves as his in-home support services worker.

9. Claimant has a history of substance use disorder, but he has now been in remission for many years.

Claimant's Evidence

10. Mayre Tamara Lee, MSN, APRN, is a board certified Adult Psychiatric Mental Health Nurse Practitioner who treated claimant at Community Psychiatry in Napa from May 2018 through September 2020. Lee diagnosed claimant with ASD.

Lee wrote a letter in support of claimant's appeal dated November 11, 2020. Lee wrote that she treated claimant for severe anxiety and mood disorder symptoms. Lee believes that claimant is on the autism disorder spectrum, and wrote "I am convinced that neuropsychological testing would provide validation that [claimant] meets the diagnostic criteria for autism."

11. Claimant has been seen by psychiatrist Brian D. Halevie-Goldman, M.D., who maintains a private neuropsychiatric practice focusing on complex neuropsychiatric conditions.

In a letter dated October 10, 2020, Dr. Goldman wrote that he has determined that claimant suffers from: 1) Autistic Disorder[1]; 2) Bipolar 1 Disorder, mixed, severe, with psychotic features; and 3) ADHD.

Regarding his diagnosis of autism, Dr. Goldman wrote that claimant displays marked deficits in social skills and communication, has a difficult time staying on task, and appears to have executive function disorder. Dr. Goldman included no other analysis to support his diagnosis, did not describe any neurological or other testing performed, and did not discuss the diagnostic criteria for ASD.

12. Claimant's family firmly believe that he has ASD. They acknowledge that he was not assessed for ASD in childhood, but noted that such assessments were less common at the time. They do not dispute that claimant has ADHD and Bipolar Disorder but note that these diagnoses do not exclude the possibility that claimant also has ASD.

13. Claimant's family work hard to support him and believe that he would benefit greatly from services he would be able to receive if he were accepted as a regional center client.

---

[1] Dr. Goldman also used the terms autism, autism spectrum disorder, and Asperger's disorder when discussing claimant.

NBRC Eligibility Determination

14. The eligibility determination was made by an eligibility team which included a physician, a psychologist, and an intake counselor. The intake counselor interviewed claimant and his mother on April 30, 2019.

Psychologist Todd Payne, Psy.D., performed an evaluation of claimant on June 19, 2019. He interviewed claimant and his mother, performed an assessment, reviewed documents provided by claimant's family, and wrote a report. Dr. Payne testified at hearing. His expert opinion testimony was persuasive.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

15. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5), section 299.00, sets forth the diagnostic criteria for Autism Spectrum Disorder as follows:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative not exhaustive):
>
> (1) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> (2) Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly

integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

(3) Deficits in developing, maintaining, and understanding relationships, ranging for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive):

(1) Stereotyped and repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies lining up toys or flipping objects, echolalia, idiosyncratic phrases).

(2) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal and nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

(3) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to a

preoccupation with unusual objects, excessively circumscribed or pervasive interests).

(4) Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g. apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in the early development. (They may not become fully manifested until social demands exceed limited capabilities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co–occur; to make co-morbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

DR. PAYNE'S REPORT AND TESTIMONY

16. Dr. Payne evaluated claimant with the Autism Diagnostic Observation Schedule (ADOS), a diagnostic tool. Although claimant's score on the ADOS did not exclude ASD, Dr. Payne nonetheless concluded that claimant did not satisfy the DSM-5 diagnostic criteria for a diagnosis of ASD. He concluded that claimant's social communication and social interactions could be deemed to satisfy Criterion A. For example, claimant had poor eye contact and a blunt affect; had difficulty maintaining back and forth conversation; and demonstrated superficial social insight. However, Dr. Payne noted that these behaviors are also consistent with claimant's diagnosed psychiatric conditions.[2]

Dr. Payne found that claimant manifested at most one restricted or repetitive behavior as delineated in Criterion B, namely claimant's avid interest in religion. Dr. Payne did not observe any evidence of the other categories of restricted or repetitive patterns of behavior. Dr. Payne also noted that an extreme interest in religion is common in individuals with manic episodes, such as occur with bipolar disorder.

Dr. Payne identified additional factors that caused him to doubt an ASD diagnosis, including the fact that there were no early developmental delays. Claimant had a history of significant psychiatric symptoms, which supports a conclusion that the behaviors he demonstrates that are arguably consistent with ASD are instead caused

[2] Dr. Payne noted that there was disagreement among claimant's treating clinicians regarding whether he has schizoaffective disorder or bipolar disorder. Dr. Payne did not find it necessary to resolve this issue in making his findings.

by psychiatric conditions. In addition, claimant received no special education services, which is rare for an individual with ASD.

17. Dr. Payne explained why he did not find the opinions of claimant's treating providers to establish a diagnosis of ASD. Dr. Payne identified the criteria set forth in the Department of Developmental Services Guidelines for evaluating another practitioner's diagnosis of ASD: 1) whether the person rendering the diagnosis has specialized training in ASD; 2) whether the evaluator used a structured observation tailored for diagnosing ASD, such as the ADOS; 3) whether there was a comprehensive parent interview; 4) whether the diagnosis was made explicitly using the criteria set forth in the DSM-5; and 5) whether the evaluator drafted a report describing compliance with these practices. Dr. Payne noted that the letters provided by Lee and Dr. Goldman did not satisfy these criteria.

Ultimate Findings

18. The evidence was insufficient to establish that claimant is substantially disabled by ASD. The clinicians who have diagnosed ASD did not testify at hearing. Neither practitioner noted what methods of evaluation and what diagnostic criteria were used. The opinions of Dr. Payne were well-reasoned and persuasive, and established that claimant does not meet the diagnostic criteria for ASD, and that his social deficits and other behaviors are instead manifestations of his psychiatric conditions.

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).) 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).)

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."

3. Regional center services are limited to individuals who meet the eligibility requirements established by law. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Act.

4. NBRC's expert performed an evaluation of claimant and determined that he does not have ASD, and that his symptoms are caused by psychiatric conditions. There was insufficient evidence to rebut his persuasive testimony. (Factual Finding 18).

5. Claimant has not met his burden of establishing that he is entitled to regional center eligibility due to autism spectrum disorder. Accordingly, his appeal is denied.

ORDER

Claimant's appeal is denied.

DATE:

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.