

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

In the Matter of:

Claimant

v.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2019100968

DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 6, 2019, in Sacramento, California.

Claimant appeared telephonically and represented himself.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC or service agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 6, 2019.

ISSUE

Is claimant eligible to receive regional center services and supports based on a qualifying condition of autism pursuant to Welfare and Institutions Code section 4512?¹

FACTUAL FINDINGS

1. Claimant is a 69-year old man who referred himself to ACRC for an eligibility determination based on an asserted diagnosis of autism spectrum disorder (ASD). He is a non-conserved adult who lives independently in an apartment, with IHSS² support provided by his daughter. In 2002, claimant previously referred himself to ACRC for an eligibility determination based on Tourette's Syndrome and Asperger Syndrome, but was found ineligible.

2002 Eligibility Determination

2. Claimant initially applied for regional center services on the basis of Tourette's Syndrome and Asperger Syndrome in April 2002. Specifically, he sought services to assist with obtaining employment, and requested funding for law school, bus services and independent living assistance.

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

² In-Home Support Services.

3. ACRC conducted a Social Assessment of claimant, and referred him to clinical psychologist, Sidney Ganzler, Ph.D., for a psychological evaluation. Dr. Ganzler met with respondent for two days in September 2002. At the time, claimant was 52 years old. As part of his evaluation, Dr. Ganzler interviewed and observed claimant, reviewed the written Social Assessment, administered a battery of tests, and wrote a report. In his report, Dr. Ganzler concluded that claimant presented with “a wide range of behavioral and cognitive characteristics which are symptomatic of Asperger Syndrome.” Dr. Ganzler explained that claimant had a “diminished awareness of the other person’s intentions, needs, goals, and interests,” resulting in him “[going] through people fairly quickly, and [wearing] out friends.” Additionally, claimant tended to focus on one aspect of a situation, “often unable to see the larger picture.” He also had an “uncanny memory for phone numbers,” need to travel to a specific destination via the same route, and was aware of and made uncomfortable by aromas that “most other people would never notice.” Finally, Dr. Ganzler noted that claimant’s basic language skills were “relatively intact,” but that his pragmatic language abilities were “significantly impaired.”

4. Thereafter, the ACRC Eligibility Team met and determined that claimant did not meet the eligibility criteria for regional center services because he did not have ASD, intellectual disability, or a condition similar to intellectual disability that required treatment similar to that required by individuals with an intellectual disability. Additionally, there was no evidence that claimant suffered a developmental disability constituting a substantial handicap prior to age 18. ACRC issued a Notice of Proposed Action informing claimant of the ineligibility determination.³

³ It was unclear from the record whether claimant appealed the determination.

Current Eligibility Application

5. In his current application, claimant asserts eligibility for regional center services on the basis of ASD, citing social communication concerns and behavioral difficulties. He seeks “general case management services with a particular interest in help with new housing, social activities, help with improving his relationships with his children and a plan for his long-term healthcare.”

6. Claimant submitted an undated letter from his daughter, in which she asserts claimant has ASD and severe Tourette’s Syndrome, and as a result, has difficulty in employment, common transportation, judgment, and relationships with people. Claimant also submitted a letter, dated July 25, 2019, from Frank Reyes, M.D., of Kaiser Permanente. In the letter, Dr. Frank confirmed he has been treating claimant since December 2016 for the diagnoses of ASD, Tourette’s Syndrome, Major Depressive Disorder, and Obsessive Compulsive Disorder. Dr. Frank provided no opinion as to the onset date for any of these conditions, or how they substantially disable claimant’s major life activities.

7. Finally, claimant offered a letter, dated October 15, 2019, from Janis Miller Lightman, O.D., also of Kaiser Permanente. Dr. Lightman noted she has been claimant’s optometrist for 20 years, and that claimant suffers from keratoconus⁴ and corneal transplant leaving him mildly visually-impaired. Dr. Lightman further noted that claimant has had issues with transportation, self-care, and personal interactions in social and workplace settings. Dr. Lightman surmised this “may relate to his autism

⁴ Misshaped cones within the retinas.

which is from an early age,” but offered no factual basis for her opinion or a specific age at which claimant was diagnosed with ASD.

ACRC Eligibility Determination

SOCIAL ASSESSMENT

8. Edward Loveridge has been an Intake Specialist at ACRC for over 16 years. He holds a bachelor’s degree in Human Services from California State University (CSU) Fullerton, and a master’s degree in Social Work from the University of Southern California. As an Intake Specialist, Mr. Loveridge’s duties include performing social assessments, scheduling appointments and gathering records as necessary, and ensuring the ACRC Eligibility Team has the information it needs to make an eligibility determination. He performs an average of 10 to 12 social assessments per month.

9. In 2019, Mr. Loveridge was assigned to perform a Social Assessment of claimant. As part of his assessment, he interviewed claimant in person, interviewed claimant’s sister and brother by telephone, and reviewed relevant ACRC records from claimant’s 2002 application for services, including intake records, the Social Assessment, Dr. Ganzler’s psychological evaluation, and claimant’s medical history records. Mr. Loveridge also reviewed documents submitted by claimant in support of his application. Mr. Loveridge prepared a written Social Assessment and testified consistent with his report.

10. Claimant perceives himself as “very disabled” and reported having several health conditions including: Tourette’s Syndrome, Barrett’s Esophageal Syndrome,

Parkinsonian tremors, hemochromatosis⁵, Obsessive Compulsive Disorder, Asperger Syndrome/ASD, cataracts, keratoconus, major depression, anxiety, acid reflux, high blood pressure, skin cancer, and possibly Attention Deficit/Hyperactivity Disorder (ADHD).

11. Claimant has a master's degree from CSU San Francisco, in a discipline he describes as "disability advocacy." He also holds a paralegal certificate and once considered going to law school. As a youth, he attended private Catholic school where he did well academically and did not receive any special education services.

12. Claimant's mother is deceased, but his father (age 93) is still living. He has four younger siblings, and has a close relationship with two of them. Claimant has four children, including a son who has severe autism and is a regional center client. Claimant divorced his spouse in 1996, and was in a romantic relationship from 1999 to 2002. He has held various jobs which he lost "due to discrimination." Over the years, he has filed multiple lawsuits against employers and government agencies for discrimination.

13. Claimant's siblings described claimant as an "odd" person who has had his "ups and downs" with social interactions. His brother noted claimant's tendency to "take a lot of energy out of the room." Currently, claimant is "very isolated and lonely." He reports spending his entire day in his living room watching television or listening to the radio. He does not drive and rarely leaves his home. His groceries and medications are delivered to him. Claimant's daughter is his IHSS worker and makes sure he has any other items he needs.

⁵ Overabundance of iron.

14. Mr. Loveridge found claimant to be “upfront and open, articulate and intelligent.” Claimant made regular eye contact and was able to carry on a normal conversation. Mr. Loveridge was particularly impressed with claimant’s memory, noting he was able to remember “details of names and events that occurred years ago, including former doctors, phone numbers, and names of service providers.” Mr. Loveridge did not note anything unusual regarding claimant’s use of gestures or other nonverbal communication. Claimant’s speech was clear and understandable, “but had a tone to it that was similar to a person with an impairment such as a stroke.” Claimant denied having a stroke. Claimant was able to stay on topic and appeared to be honest. On occasion, he exhibited vocal tics or sounds. He was also able to get up on his own and get a drink of water without difficulty.

15. Mr. Loveridge also evaluated the seven areas of adaptive skills identified in the Lanterman Developmental Disabilities Services Act (Lanterman Act) to determine eligibility.

a. Self-Care: Claimant reported he does not like the feel of water, and has not had a real bath or shower in several years. He cleans himself using adult wipes. He is able to dress and feed himself, but changes his clothes only every few days. He is able to brush his teeth and comb his hair, but does not do so often.

b. Receptive and Expressive: Claimant speaks in full and complete sentences and can carry on a back-and-forth conversation. He is articulate though his speech is somewhat affected.

c. Learning: Claimant holds an advanced degree from CSU San Francisco.

d. Mobility: Claimant can walk and has use of his arms and hands, though he has Parkinsonian tremors in his arms.

e. Self-Direction: Claimant is able to choose what he wishes to do or where he wishes to go. He can schedule his own appointments and manage his own money. He chose not to learn to drive, but is capable of utilizing medical transport to go to the doctor.

f. Capacity for Independent Living: Claimant lives independently and receives IHSS from his daughter, who assists with household chores and some food preparation. Claimant makes his own food, usually microwave dinners. He has groceries, medications, and other necessary supplies delivered to him. He pays his own bills and schedules his own appointments. While married, claimant was a stay-at-home parent, caring for his children and the home. As a young child, he was capable of self-care and independent living tasks. As he aged, claimant's phobia of water and his health have impacted his ability to complete tasks on his own.

g. Economic Self-Sufficiency: Claimant's primary source of income is social security disability income (SSDI), spousal support from his ex-wife, and monies from various legal settlements.

CASE REVIEW

16. Cynthia Root, PhD., has been employed as a staff psychologist at ACRC for 11 years. She holds a bachelor's degree in Communication from Michigan State University, a master's degree in Marriage and Family Therapy from CSU San Francisco, and a doctorate in Clinical Psychology from The California School of Professional Psychology at Alliant University.

17. In her role at ACRC, Dr. Root sits on the Eligibility Review Team, consults with vendor psychologists, consults with intake staff, and conducts assessments for developmental disabilities. She has experience with performing and interpreting psychological assessments, including for ASD, results of ASD diagnostic schedules, and differential diagnoses. She conducts an average of 700 to 800 case reviews annually. She is familiar with the legal criteria for eligibility for regional center services which she defined as: (1) an intellectual disability, ASD, cerebral palsy, epilepsy or a disabling condition found to be closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, (2) which causes the claimant to be substantially disabled in at least three areas of major life activity, and (3) which had an onset prior to age 18.

18. Dr. Root was a member of the Eligibility Review Team for claimant, and testified at hearing. She did not meet or evaluate claimant, but reviewed relevant documents including: Dr. Ganzler's 2002 Psychological Evaluation, claimant's medical history records, and the Social Assessments from 2002 and 2019. Dr. Root found no evidence that claimant was diagnosed prior to age 18 with ASD, seizure disorder, cerebral palsy, intellectual disability, or a disabling condition closely related to an intellectual disability. Dr. Root acknowledged that ASD was not a diagnostic term used in 2002. She disagreed with Dr. Ganzler's diagnosis of Asperger Syndrome, noting there was an insufficient foundation for said diagnosis. In any event, she pointed out that any findings Dr. Ganzler made concerning claimant's adaptive function prior to age 18 was based solely on claimant's own representations and that of his friends/family. Dr. Ganzler did not interview anyone who knew claimant before age 18, nor did he review any medical records for that time period. Even presuming claimant had an ASD diagnosis prior to age 18, Dr. Root pointed out that there was no evidence that claimant was substantially disabled by any condition prior to age 18.

ELIGIBILITY REVIEW

19. The ACRC Eligibility Team determined that claimant was not eligible for regional center services. A Notice of Proposed Action (NOPA) was issued on October 8, 2019, informing claimant as follows:

[Claimant] has been determined ineligible for Regional Center services because he does not have a developmental disability as defined by the Lanterman Act. Specifically, the evidence presented to Alta California Regional Center did not establish that [claimant] was substantially disabled in at least three areas of major life activity due to Autism prior to age 18. In addition, there is no evidence that prior to age 18 he had substantially disabling cerebral palsy, epilepsy, intellectual disability or a disabling condition closely related to intellectual disability which requires treatment similar to that required for intellectually disabled individuals.

Discussion

20. When all the evidence is considered, claimant did not establish that he qualifies for services from ACRC under the Lanterman Act on the basis of ASD. Although Dr. Frank noted that claimant has been diagnosed with ASD, he did not state when or by whom, or on what evidence, claimant was so diagnosed. Claimant offered no other evidence regarding when he received said diagnosis or whether his ASD onset was prior to age 18. Claimant also failed to establish that, even if he were diagnosed with ASD prior to age 18, that said condition substantially disabled his ability to engage in three major life activities prior to age 18. On the contrary, as

demonstrated by the 2002 and 2019 Social Assessments, as well as claimant's own assertions, he is capable of self-care, managing his own money, and living independently. He actively chooses not to drive, but otherwise is able to arrange for transportation as needed. He is articulate and well-educated. He was married and, as a young adult, was a primary caregiver for his children. While claimant has many challenges and health issues, none of these constitute a developmental disability under the Lanterman Act. Consequently, claimant's request for services and supports from ACRC under the Lanterman Act must be denied.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (§ 4501.) As defined in the Lanterman Act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, and that constitutes a substantial disability for the individual.

Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a).)

2. In seeking government benefits, the burden of proof is on the person seeking the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is a preponderance of the evidence. (Evid. Code, § 115.).

3. "Substantial handicap" is defined by regulations to mean "a condition which results in major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit. 17, § 54001, subd. (a).) Because an individual's cognitive and/or social functioning is multifaceted, regulations provide that the existence of a major impairment shall be determined through an assessment that addresses aspects of functioning including, but not limited to: (1) communication skills, (2) learning, (3) self-care, (4) mobility, (5) self-direction, (6) capacity for independent living and (7) economic self-sufficiency. (Cal. Code Regs., tit. 17, § 54001, subd. (b).)

4. As set forth in the Factual Findings as a whole, claimant failed to establish that he has a developmental disability that originated before age 18, and that said condition substantially disabled his ability to engage in three major life activities prior to age 18, and that said diagnosis and substantial disability continues for claimant. Claimant is therefore not eligible to receive services through ACRC.

ORDER

Claimant's appeal from the Alta California Regional Center's determination of ineligibility is DENIED. Claimant is not eligible for regional center services under the Lanterman Act.

DATE: December 19, 2019

TIFFANY L. KING
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).)