

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019100978**

**DECISION**

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 11, 2020, in Pomona, California.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (SGPRC or Regional Center). Claimant was represented by his mother (Mother),<sup>1</sup> who is also his authorized representative. Claimant was present for a

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<sup>1</sup> To protect their privacy, Claimant and Claimant's family members are not identified by name.

portion of the hearing and testified on his own behalf. Alma Villegas, qualified court interpreter, provided Spanish-language interpreter services during the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on the hearing day.

## **ISSUE**

Is Claimant eligible for services pursuant to the Lanterman Developmental Disabilities Services Act?

## **FACTUAL FINDINGS**

### **BACKGROUND**

1. Claimant was born on January 8, 1998. According to Mother, after his birth, Claimant's face had a purple hue and he did not cry. No medical records or other evidence regarding the circumstances of his birth or whether they could have impacted his development was presented at the hearing.

2. Claimant exhibited learning deficits at age five. A June 2003 report from the Independent Education Program (IEP) team at his school district, Pomona Unified School District (Pomona School District), states that Claimant exhibited learning and speech disorders in the areas of articulation, morphology, and semantics. (Exh. 5, p. 2.) According to the report, a difficulty in semantics "adversely affects a child's ability to determine appropriate words or inability to determine appropriate words or inability to demonstrate abstract reasoning in the general curriculum." Based on the IEP team's observations, Claimant was eligible for special education services because "established

goals and objectives cannot be met in a general education classroom setting without the support of special educations and/or related services.” (*Id.* at p. 6.)

3. A. An April 2007 report from the IEP team states that Claimant exhibited continued language and speech-related learning disability in the area of semantics, as well as now exhibiting reduced intelligibility. It also states that the IEP team found “severe discrepancy between measures of intellectual ability and . . . [r]eading [c]omprehension, [w]ritten expression, and [b]asic [r]eading [s]kills.” (Exh. 6, p. 3.)

B. The 2007 report also notes that Claimant exhibited problematic behavior at the time: “[Claimant] has a history of aggressive behavior with peers and has difficulty following playground rules.” (Exh. 6, p. 10.) During this time, Claimant received special education instruction in the areas of language and speech and psychological counseling to address his behavioral issues.

4. An April 2008 report from the IEP team states that Claimant continued to exhibit a learning disorder in the areas of language and speech that year. His placement in special education in the areas of language and speech continued. Of note, the report stated “[Claimant]’s overall performance in Reading is in the low average range. He can decode words well but struggles as they get more complex. He also struggles in being able to ask/answer questions to a reading.” (Exh. 7, p. 5.) The IEP team found similar deficits in Claimant’s writing abilities, stating in its report that “Claimant’s overall performance in Writing is in the low average range. He can spell/write basic words but struggles as they get more complex. He can address a prompt but struggles with the transfer of ideas to paper & language mechanics.” (*Id.* at p. 6.) For this period, when Claimant was ten years old and in the fourth grade, the IEP team approximated Claimant’s reading and writing levels to be at an upper second grade level. (*Ibid.*)

5. The IEP team's March 2009 report shows some changes in the team's understanding of Claimant's condition. "Written Expression" was the sole area of marked severe discrepancy from intellectual ability. In this IEP report, Claimant's reading and writing skills were not assessed in terms of a grade level.

6. The IEP team's March 2010 report reflects much the same results as the March 2009 report; however, here, the IEP team assessed Claimant's reading and writing skills to be at a mid-fourth grade level. The report confirmed the need for ongoing special education assistance for Claimant at the rate of 225 minutes per week.

7. A combination of testimony from Mother and IEP team reports established that Claimant continued to have substantial difficulty in reading and writing and continued to qualify for special education assistance throughout middle and high school. Claimant's school records also established areas where he is clearly gifted, particularly in mechanical engineering, engineering-related drafting, and drawing.

8. Claimant graduated from high school and currently attends a local college where he is majoring in mechanical engineering.

9. When Claimant was 13 years old, he was placed in foster care for approximately six months. Claimant was removed from his home because of his escalating angry outbursts, particularly around his family. During his teen age years, Claimant was hospitalized for psychiatric treatment multiple times for his behavior issues. A report from the counseling services group which worked with Claimant during this time describes him as depressed, angry, with poor judgement, and poor impulse control (Exh. 10, p. 11)

10. Mother testified at the hearing and stated that, after returning from foster care, Claimant became ever more difficult to deal with, lashing out at her, refusing to assist with basic chores, needing repeated prompting to go to school, do his homework, and keep himself clean. Mother presented as exhausted and overwhelmed by Claimant's needs and behavior.

11. Claimant's only sibling, a sister, testified at the hearing and stated that Claimant behaves angrily toward her most of the time, telling her his life would have been so much better if she had never been born.

12. Claimant testified at the hearing. He stated that he struggles with classes involving a lot of reading and writing, such as his political science class and that his grades are not good. Claimant stated that he has never held a job. He has attended a few job interviews but was never extended an offer. Claimant feels lonely and isolated. His efforts at socializing with peers are often not reciprocated.

## **SGPRC'S REVIEW**

13. Deborah Langenbacher, PhD. is a psychologist and is responsible for evaluating applicants for regional center eligibility at SGPRC. SGPRC introduced Dr. Langenbacher's notes about Claimant's eligibility. The first set, dated July 16, 2019, state that 98 per cent of Claimant's time in school was in regular education programs. She also states in the notes "It would be helpful to obtain and review any prior PsychEd reports of results of cognitive testing." (Exh. 3, p. 1.) In her August 20, 2019 note, Dr. Langenbacher cited a psychological evaluation from 2015, which was not submitted into evidence at the hearing, but on which she relied in forming her opinion. Relying on the 2015 evaluation and the other materials submitted by Mother,

the notes reflect Dr. Lagenbacher concluded that Claimant did not have a qualifying disability.

14. Dr. Lagenbacher testified at the hearing and stated that, based on the IEP reports and the psychoeducational reports submitted in connection with Claimant's application, she determined that Claimant's condition was the sole result of learning disabilities and psychiatric disorders. Moreover, Claimant's academic strengths in discrete areas are further evidence that Claimant does not suffer from intellectual disability or a condition similar to intellectual disability, the most likely bases for eligibility. In Dr. Lagenbacher's professional experience and knowledge, such conditions are marked by low performance in all areas.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> promises services and supports to individuals with developmental disabilities.

2. Section 4512(a) defines a developmental disability as: "...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." It includes "intellectual disability, cerebral palsy, epilepsy, and autism. . . [and] shall also include disabling conditions found to be closely related to intellectual disability or to

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<sup>2</sup> Statutory cites are to the Welfare and Institutions Code unless otherwise referenced.

require treatment similar to that required for individuals with an intellectual disability but shall not include other handicapping conditions that are solely physical in nature.”

3. California Code of Regulations, title 17 (Regulation), section 54000, defines “developmental disability” and requires that the disability originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature, are excluded.

4. Regulation section 54001 defines “substantial disability” to mean:

(a) ‘Substantial disability’ means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the Regional Center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

5. Regulation section 54010 provides as follows:

(a) 'Developmental Disability' means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality

disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. In determining eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

7. Individuals in disagreement with regional center determinations, such as in the instant case, appeal the determination through a fair hearing process. (§§ 4700 - 4716, and Regs., §§ 50900-50964). Because Claimant seeks to establish his eligibility for services, he bears the burden to demonstrate eligibility, and that the

Regional Center's decision to deny eligibility is incorrect. (See Evid. Code, §§ 115, 500.)

8. A. Claimant and his family members all present as very sympathetic and credible. Clearly Claimant has numerous challenges as well as talents and the effort to manage life under his circumstances have taken their toll on all them; however, Claimant did not establish that the Regional Center's decision denying him eligibility is incorrect. Specifically, Claimant did not establish that he has any of the five qualifying developmental disability which originated before age 18 as required under the Lanterman Act. Additionally, Dr. Langenbacher's opinion, though necessarily discounted somewhat because of its reliance on a report not submitted into the record, further supports a finding that Claimant is not eligible for Regional Center services.

B. Accordingly, Claimant's appeal must be denied. Nothing in this decision prevents Claimant from re-applying for regional center eligibility and services if evidence emerges supporting the conclusion that he does have a qualifying disability and that its onset occurred before he reached the age of 18.

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## **ORDER**

Claimant's appeal is denied.

DATE:

DEENA R. GHALY

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.