

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

In the Matter of:

CLAIMANT,

VS.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2019111081

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 23, 2020, in Los Angeles, California.

Claimant was represented by her mother. The names of Claimant and her family members are omitted to protect their privacy.

Karmell Walker, Fair Hearings Manager, represented South Central Los Angeles Regional Center (SCLARC).

Doneida Marroquin provided Spanish interpreter services for Claimant's mother and other witnesses during the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 23, 2020.

ISSUE

Whether Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act.

EVIDENCE RELIED UPON

Documents: SCLARC exhibits 1 through 9; Claimant's exhibits A and B.
Testimony: Laurie McKnight Brown; Claimant's mother, father, and aunt.

FACTUAL FINDINGS

Jurisdictional Matters

1. SCLARC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹

¹ Undesignated statutory references are to the Welfare and Institutions Code.

2. Claimant is a nine-year-old girl. In May 2019, Claimant's mother requested that SCLARC evaluate Claimant for eligibility for services under the Lanterman Act.

3. SCLARC assessed Claimant and determined she was ineligible for services because she did not have a developmental disability as defined in the Lanterman Act. (See § 4512, subd. (a).) SCLARC sent Claimant's mother a letter dated October 29, 2019, stating Claimant was ineligible.

4. On November 15, 2019, SCLARC received Claimant's Fair Hearing Request to appeal SCLARC's denial of eligibility.

5. Based on its congested court calendar, OAH found good cause to set the hearing for a date later than the 50-day time period provided for under section 4712, subdivision (a).

Background

6. Claimant was born on March 15, 2010. She was reportedly the product of a normal, full-term pregnancy and Cesarean section delivery, and was discharged home after delivery with no medical concerns. She has no reported history of surgeries or seizures, and no reported hearing or vision impairment. She does have a reported history of lead exposure, and was also hospitalized once for three days for an insect bite. She is in good health, receives regular medical and dental care, and has no known drug or food allergies. She does not take medications on a regular basis.

7. Claimant lives with her parents, her younger brother, and two older siblings. Another older sibling lives independently. According to her mother, Claimant walked independently at 16 months old and said her first words at three years old, but

did not begin speaking in full sentences until age five. She was also toilet trained at age five.

8. Before turning three years old, Claimant was briefly a client of SCLARC, but the evidence did not establish what services she received. In early 2013, SCLARC referred Claimant for a psychological evaluation to assist in the process of determining continued eligibility for services. Ann L. Walker, Ph.D., a clinical psychologist, performed the evaluation on January 18, 2013, administering several standardized tests, conducting a clinical interview, and reviewing records. Based on the evaluation, Dr. Walker concluded that Claimant did not meet the criteria for a diagnosis of autistic disorder. Claimant also performed in the normal range for nonverbal intelligence and visual spatial and working memory skills, although her verbal comprehension skills were in the low borderline range. Dr. Walker's diagnostic impression was a Mixed Receptive Expressive Language Disorder, and she recommended that diagnosis to rule out in a future speech therapy evaluation through the public schools. Dr. Walker also recommended further assessment of Claimant's social skills development and referral for an appropriate preschool placement.

9. Based on the evaluation, Claimant did not continue to receive services from SCLARC. She is now in fourth grade at an elementary school in the Los Angeles Unified School District. In February 2018, Maria G. Navarro, M.A., a school psychologist, performed a psycho-educational assessment of Claimant due to concerns that her work in math, reading, and writing did not meet grade-level expectations. The assessment included evaluations of Claimant's cognitive ability, auditory processing and visual perception skills, sensory-motor skills, language skills, and behaviors. Ms. Navarro reported that Claimant's cognitive ability was within the average range when compared with her same-age peers, and that there was a "severe

discrepancy” between Claimant’s cognitive ability and her academic achievements. According to Ms. Navarro, this was “primarily due to a psychological processing disorder in the area of auditory processing.” (Exhibit 7.) As a result of that disorder, Claimant met eligibility criteria for special education as a student with a Specific Learning Disability (SLD). Claimant has an Individualized Education Program (IEP) regarding this SLD.

Assessments in 2019

10. On May 14, 2019, Maritza Cortes, a service coordinator in SCLARC’s intake unit, met with Claimant and her parents to obtain her medical, family, educational, and social history, and to assess her current functioning. In the report of the meeting, Ms. Cortes stated that Claimant established appropriate eye contact, came willingly into the interview room, and spoke in a clear manner using sentences of five words or more. She was also active and playful, answered questions, and was able to follow simple commands. But her mother reported that Claimant acted like a much younger child, had difficulties with self-care, and needed repetition and prompts to follow instructions. Ms. Cortes recommended a psychological evaluation to assess for the presence of intellectual disability or autism.

11. Thomas L. Carrillo, Ph.D., a clinical psychologist, reviewed Claimant’s available records and evaluated her on October 2, 2019, administering the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); the Wide Range Achievement Test – Fourth Edition; the Vineland Adaptive Behavior Scales – Third Edition; and the Childhood Autism Rating Scale – High Functioning Version. Dr. Carrillo also performed clinical interviews of Claimant and her mother, and made clinical observations of Claimant’s behavior. According to Dr. Carrillo’s report of the evaluation, Claimant initially presented herself as a somewhat tentative child, and required a period of

acclimation before she demonstrated good social skills. But during the middle and latter portions of the testing session, Claimant demonstrated good and meaningful eye contact and was social and engaging. She did not display any unusual or bizarre behaviors or symptomatology associated with autism spectrum disorder or attention deficit/hyperactivity disorder.

12. On the WISC-V, the overall results yielded a Full-Scale Intelligence Quotient (IQ) of 83, suggesting that Claimant's cognitive abilities were in the low-normal range. On the Wide Range Achievement Test – Fourth Edition, Claimant tested at a second-grade level with respect to her academic abilities, although she was in fourth grade. On the Vineland Adaptive Behavior Scales – Third Edition, Claimant's overall adaptive abilities fell within the borderline range of delay, with her communication abilities in the mild range of delay. On the Childhood Autism Rating Scale – High Functioning Version, Claimant received a total score of 17.0, which is within the minimum/no symptoms range for autism spectrum disorder.

13. Considering all of the available information, Dr. Carrillo determined that Claimant did not meet the diagnostic criteria for intellectual disability or autism spectrum disorder in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). The criteria for intellectual disability include deficits in intellectual functions and adaptive functioning that onset within the developmental period. (Exhibit 9.) The criteria for autism spectrum disorder are persistent impairment in reciprocal social communication and social interaction (Criterion A), and restricted, repetitive patterns of behavior, interest, or activities (Criterion B). Those symptoms must be present from early childhood and limit or impair everyday functioning (Criteria C and D), and not be better explained by intellectual disability or global developmental delay (Criterion E). (Exhibit 8.)

14. Dr. Carrillo diagnosed Claimant with a language disorder, related borderline delays in adaptive skills, and cognitive abilities within the low-normal range. He recommended that Claimant continue to receive special education services and be reevaluated by the school district in one year to determine the extent of her progress. He also recommended referring Claimant for an audiological evaluation to rule out a possible hearing deficit.

15. On October 22, 2019, SCLARC's "interdisciplinary core staff team" met to review Claimant's request for services, and determined she was ineligible for services from SCLARC because she did not have a developmental disability as defined in the Lanterman Act. SCLARC's letter to Claimant's mother dated October 29, 2019, reflects that determination.

Hearing

16. SCLARC offered documentary evidence of all of the assessments described above, and called Laurie McKnight Brown, Ph.D., a clinical psychologist, to testify about them. Dr. McKnight Brown is the lead psychologist consultant on the eligibility team at SCLARC. She testified that Claimant had not been diagnosed with intellectual disability, autism spectrum disorder, or any other developmental disability that qualified for services under the Lanterman Act. Dr. McKnight Brown identified Claimant's communication deficits as the primary concerns, and testified that a diagnosis of a language disorder is not a qualifying diagnosis for eligibility under the Lanterman Act.

17. Claimant's mother testified that Claimant's exposure to lead was first detected when Claimant was 20 months old. Although Claimant is now checked for lead exposure monthly, she is not progressing noticeably and does not learn. Claimant

gets frustrated because she does not understand her homework, and wakes up every night because she is scared. One time, Claimant asked her mother, "Why was I born dumb?" Claimant is also very timid and does not trust people. Claimant's mother has to tie Claimant's shoes and look for her clothes, and Claimant will not bring something when asked. Claimant also cannot retain information, and still acts like she is in kindergarten. The evaluations at SCLARC were very short and do not give a complete description of Claimant's behavior.

18. Claimant's father testified that he does not see Claimant as a nearly 10-year-old girl, and it hurts him to see that. When her exposure to lead was detected, he was told that Claimant's brain would be affected. She does not act like a normal child, and is scared and frightened about everything, and sometimes starts drooling from her mouth. She is getting older but not making progress, and cannot put her shoes on and needs to be bathed. Claimant father fears for the future if she does not get help now.

19. Claimant's aunt testified she has to be careful how she speaks to Claimant because Claimant is easily upset, and often cries and is scared of everything. Claimant also stays right next to her mother for everything, and is isolated socially. In addition, Claimant sometimes wets herself when she gets mad.

Analysis of Evidence

20. SCLARC's evidence that Claimant does not have intellectual disability or autism spectrum disorder had more persuasive force than Claimant's evidence. Dr. Carrillo's evaluation report was thorough, and Dr. McKnight Brown's descriptions of that evaluation and the other evidence was persuasive. Claimant did not present a diagnosis from another qualified professional to rebut Dr. Carrillo's diagnosis of a

language disorder. The testimony of Claimant's parents and aunt about her lack of progress was credited, but did not prove that Dr. Carrillo's diagnosis was wrong. Furthermore, Claimant's exposure to lead during early childhood was not shown to have caused an intellectual disability or other developmental disability as defined in the Lanterman Act. On the record presented, no qualified professional has determined that it did.

LEGAL CONCLUSIONS

General Legal Standards

1. The Lanterman Act provides facilities and services to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) Under the Act, "'[d]evelopmental disability' means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to 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." (§ 4512, subd. (a).)

2. SCLARC determined Claimant does not have a developmental disability as defined in the Lanterman Act. Claimant disagrees, and has properly exercised her right to an administrative fair hearing. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d

156, 161 [disability benefits]; see also *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136 [denying eligibility where an applicant's expert opinion evidence did not "sufficiently refute" the regional center's expert opinion evidence].) This burden requires proof by a preponderance of the evidence, because no law or statute (including the Lanterman Act) provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Discussion

3. Claimant did not prove she has an intellectual disability, cerebral palsy, or epilepsy, which are three forms of developmental disability under the Lanterman Act. (§ 4512, subd. (a).) There was no evidence that Claimant has cerebral palsy or epilepsy, and Claimant's Full-Scale IQ was measured in the low-normal range, which suggests she does not have an intellectual disability. (Factual Finding 12.) Based on his evaluation, Dr. Carrillo diagnosed Claimant with a language disorder, related borderline delays in adaptive skills, and cognitive abilities within the low-normal range, not with an intellectual disability. (Factual Finding 14.) There was no evidence that any other professional has diagnosed Claimant with an intellectual disability, and the testimony of Claimant's family members is not enough by itself to rebut Dr. Carrillo's diagnosis.

4. Claimant also did not prove she has autism. No professional has diagnosed Claimant with autism spectrum disorder, and she tested within the "minimum/no symptoms" range for autism spectrum disorder when evaluated by Dr. Carrillo. (Factual Finding 12.)

5. In addition, Claimant did not prove she has a "fifth category" developmental disability, that is, a "disabling condition[] . . . closely related to intellectual disability or . . . requir[ing] treatment similar to that required for individuals with an intellectual disability. . . ." (§ 4512, subd. (a); *see Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486-1487 (*Samantha C.*).

6. In *Samantha C.*, a young adult (Samantha) seeking regional center services was born prematurely and with hypoxia (oxygen deprivation). In elementary school, her cognitive abilities were measured to be in the average range, but she received special education services because of deficits in auditory processing, language, speech, and memory. She was later diagnosed with attention deficit disorder. She ultimately graduated from high school and enrolled in a junior college, but received Supplemental Security Income (SSI) disability benefits and qualified for Department of Rehabilitation services. During the process of requesting regional center services, cognitive tests yielded scores of 92 and 87, with a Full-Scale IQ score of 90, placing her in the average range. Adaptive functioning testing revealed that she functioned adequately in daily living and social skills, but at a moderately low level in the area of communication. While various experts arrived at different conclusions, at least two experts (whom the court found persuasive) opined that she had major adaptive impairments and functioned in the range of someone with mental retardation (i.e., intellectual disability). The same experts opined that her hypoxia affected her brain and created a neurocognitive disorder explaining her various deficits. One expert stated that her cognitive and adaptive skills deficits "'might all be subsumed under a diagnosis of Cognitive Disorder Not Otherwise Specified, indicating that they are secondary to a medical condition.'" (*Samantha C., supra*, 185 Cal.App.4th at p. 1493.)

7. The court held that Samantha had a fifth category condition, and therefore was eligible for regional center services. First, the court concluded she had a disabling condition, i.e., she had "suffered birth injuries which affected her brain and that her cognitive disabilities and adaptive functioning deficits stem, wholly or in part, from such birth injuries." (*Samantha C.*, *supra*, 185 Cal.App.4th at pp. 1492-1493.) Since the evidence established that her cognitive and adaptive deficits were related to her hypoxic birth episode, there was no substantial evidence that her condition was solely psychiatric or solely a learning disability, which are both excluded from the Lanterman Act definition of developmental disability. (*Id.*; see Cal. Code Regs., tit. 17, § 54000, subd. (c)(1)-(2).) Second, the court held that her condition required treatment similar to that required by individuals with intellectual disability, based on expert testimony comparing her treatment needs to those of intellectually disabled persons. (*Samantha C.*, *supra*, 185 Cal.App.4th at pp. 1493-1494; cf. *Ronald F. v. Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 97-99 ["treatment" has "a different and narrower meaning" than "services" for persons with developmental disabilities, such as those listed in section 4512, subdivision (b)].)

8. In this case, Claimant did not prove that she has a disabling condition closely related to intellectual disability, or requires treatment similar to that required by individuals with intellectual disability. The language disorder diagnosed by Dr. Carrillo is not closely related to intellectual disability. Furthermore, "[s]olely learning disabilities" are excluded from the definition of developmental disability under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).) In addition, no evidence indicated that Claimant's treatment needs were similar to those of individuals with intellectual disability. Therefore, Claimant did not meet her burden of proving she has a fifth category condition.

9. Claimant's family provided persuasive testimony that Claimant has developmental delays and displays behaviors of concern. But on this record, Claimant did not prove she has a developmental disability as defined in the Lanterman Act.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS HELLER

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.