

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

In the Matter:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2019111083

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 his mother. The names of Claimant and his 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 12; Claimant's exhibits A and B.
Testimony: Laurie McKnight Brown; Claimant's aunt, father, and mother.

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 seven-year-old boy. 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 he was ineligible for services because he did not have a developmental disability as defined in the Lanterman Act. (See § 4512, subd. (a).) SCLARC sent his mother a letter dated October 29, 2019, stating he 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 May 22, 2012. He was reportedly the product of a normal, full-term pregnancy and Cesarean section delivery. He was born with jaundice and received phototherapy, after which he was discharged home with no medical concerns. He has no reported history of hospitalizations, surgeries, seizures, or lead exposure, and no reported hearing or vision impairment. He is in good health, receives regular medical care, and has no known drug or food allergies. He does not take medication on a regular basis.

7. Claimant lives with his parents and three older siblings. Another older sibling lives independently. According to his mother, Claimant walked independently at 14 months old, but did not speak in sentences until age four. For this reason, he

received services from SCLARC as a client in the Early Start Program, which is established by the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) for infants and toddlers who are born with, or at risk for, developmental delay. He was toilet trained at four-and-a-half years old.

8. In early 2015, SCLARC referred Claimant for a psychological evaluation to determine whether he had autism or an intellectual disability. Victor C. Sanchez, Ph.D., a clinical psychologist, performed the evaluation on April 28, 2015, administering several standardized tests, conducting a clinical observation, and interviewing Claimant's parents. Based on the evaluation, Dr. Sanchez concluded that "a few symptoms in the area of possible [n]euro[-]developmental disorders may be present. However, it is not clear that the problems are present at a sufficient frequency or intensity to allow considering a formal diagnosis. Certainly, it does not appear that a diagnosis of full syndrome Autism Spectrum Disorder would be justifiable." (Exhibit 4.) Dr. Sanchez's diagnostic impression was a language disorder and borderline intellectual functioning.

9. SCLARC determined that this diagnosis did not meet the eligibility criteria for regional center services after the age of three, and referred Claimant to the Los Angeles Unified School District to start the Individualized Education Program (IEP) process. The school district performed its initial IEP assessment in June 2015, and Claimant was found to be developmentally delayed, qualifying him for special education services. In March 2017, the district changed his eligibility classification from developmentally delayed to a Specific Learning Disability (SLD).

10. In May 2018, Trenisha Carrington, M.A., a school psychologist, performed a psycho-educational assessment of Claimant due to some question about the appropriateness of the SLD eligibility classification for special education services.

The assessment included evaluations of Claimant's cognitive ability, auditory perceptual skills, developmental task readiness for kindergarten, language skills, and reported behaviors. Based on behaviors reported by Claimant's mother and teacher, Claimant "fell in the Very Elevated range in having many behavioral characteristics similar to children diagnosed with an Autism Spectrum Disorder." (Exhibit 9.)

Claimant's cognitive abilities were measured in the average range, but he was reported to have difficulty using appropriate verbal communication for social contact. He also was reported to have difficulty tolerating changes in routine, to use language in an atypical manner, and to overreact to sensory stimulation. Ms. Carrington also observed Claimant moving his fingers repetitively during class and recess.

11. Based on this information, Ms. Carrington recommended that Claimant's eligibility classification for special education services be changed from SLD to autism. The school district made that change. Claimant is now in second grade, and continues to receive special education services under the eligibility classification of autism.

Assessments in 2019

12. On May 14, 2019, Maritza Cortes, a service coordinator in SCLARC's intake unit, met with Claimant and his parents to obtain his medical, family, educational, and social history, and to assess her current functioning. In the report of the meeting, Ms. Cortes stated that Claimant established brief eye contact upon being greeted, and smiled and came willingly into the interview room. Once in the room, he was happy to see toys and played, and sought out Ms. Cortes' attention to explain what he drew. He was heard making vocal sounds while he played with the toys, and had difficulty sitting still. His eye contact was present, but not consistently maintained. He used phrases and simple sentences to communicate, but his speech was difficult to understand due to articulation errors and omission of sounds. Claimant's mother

reported that he exhibited repetitive body movements such as spinning in circles and biting his fingernails. He also reportedly wandered off if not supervised, engaged in self-talk, and was sensitive to certain noises. Ms. Cortes recommended a psychological evaluation to assess for the presence of intellectual disability or autism.

13. Thomas L. Carrillo, Ph.D., a clinical psychologist, reviewed Claimant's available records and evaluated him 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; the Childhood Autism Rating Scale – High Functioning Version; and the Autism Diagnostic and Observation Schedule, Second Division (ADOS-2) – Module 3. Dr. Carrillo also performed clinical interviews of Claimant and his father, and made clinical observations of Claimant's behavior. According to Dr. Carrillo's report of the evaluation, Claimant presented himself as a talkative and engaging child who was in constant motion and highly impulsive. His eye contact was good and meaningful, but he required constant and continual redirecting in order to sustain his attention on the stimulus items presented. Eventually, Claimant responded to the stimulus items at a level that allowed a valid overall profile.

14. On the WISC-V, the overall results yielded a Full-Scale Intelligence Quotient (IQ) of 88, suggesting that Claimant's cognitive abilities were in the normal range. On the Wide Range Achievement Test – Fourth Edition, Claimant academic skills ranged from a kindergarten to a first-grade level, although he was in second grade. On the Vineland Adaptive Behavior Scales – Third Edition, Claimant's overall adaptive abilities fell within the low-normal range. In the area of socialization, his score was within the mild range of delay. On the Childhood Autism Rating Scale – High Functioning Version, Claimant received a total score of 18.0, which is within the

minimum/no symptoms range for autism spectrum disorder. On the ADOS-2, Claimant received a total score of 4, "which is well below the threshold for a diagnosis of Autism and well below the threshold for a diagnosis of Autism Spectrum Disorder." (Exhibit 5.)

15. 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 11.) 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 10.)

16. Dr. Carrillo diagnosed Claimant with attention deficit/hyperactivity disorder, combined presentation, severe; a language disorder; related borderline delays in adaptive skills; and cognitive abilities within the normal range. He recommended that Claimant continue to receive special education services consistent with these diagnoses, and be reevaluated by the school district in one year to determine the extent of his progress. Dr. Carrillo also recommended exposure to socially and adaptively enriching environments so as to improve Claimant's social and adaptive skills.

17. On October 22, 2019, SCLARC's "interdisciplinary core staff team" met to review Claimant's request for services, and determined he was ineligible for services from SCLARC because he 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

18. 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 testified that SCLARC did not find that Claimant has an intellectual disability, autism spectrum disorder, or any other developmental disability that qualified for services under the Lanterman Act. Dr. McKnight Brown opined that Claimant's symptoms can be associated with attention deficit/hyperactivity disorder, which was Dr. Carrillo's diagnosis. Dr. McKnight Brown also testified that the school district's eligibility classification of autism for special education services was not considered to be a clinical diagnosis of autism spectrum disorder. This is because the eligibility classifications for special education purposes are different and less detailed than the diagnostic classifications in the DSM-5. In support of that testimony, SCLARC offered an excerpt of a publication by the Department of Developmental Services entitled *Autistic Spectrum Disorders: Best Practice Guidelines for Screening, Diagnosis and Assessment* (2002), stating that educational classifications for special education services "differ from and do not capture the level of detail found in standard diagnostic classification systems" (Exhibit 12.)

19. Claimant's father testified that Dr. Carrillo's evaluation was very brief and inadequate. Claimant needs a great deal of help, and Claimant's father believes he has autism. Claimant speaks a great deal about death, runs into things, and does not appreciate danger. He also hits and scratches himself, pulls his mouth apart with his fingers, pulls his hair, and hits his head against the wall. Claimant cannot be with other

children because he is so distracted and will hit other children. He has also tried to eat a cap from a water bottle, and has defecated on himself and started rubbing feces on surfaces in the house. Claimant does not know how to clean himself after using the toilet, has tantrums, and does not act his age.

20. Claimant's aunt testified that Claimant is always up and down, and throws himself on the floor and has tantrums about anything he does not like. He has also smeared his own feces on the walls. He cries often, and his family even has a stroller for him because he is so difficult to control. Claimant has been like that for as long as his aunt can remember.

21. Claimant's mother testified that Claimant's main problems are that he hurts and scratches himself and cannot do even simple things. Claimant cannot sit still, and was overly sensitive to the sound of the vacuum and the feeling of stepping on sand when he was younger. Claimant also starts drooling when he gets angry, and he constantly bites his nails and picks his nose. He also starts panicking when he is being bathed, and cries often and throws tantrums. The school is providing academic and language assistance for Claimant, but not enough behavioral assistance for him. Claimant still cannot read even two sentences in a book.

22. Claimant's mother also testified that Claimant's primary care physician recently provided a referral to a psychiatrist to evaluate Claimant. The referral authorization lists diagnoses of autistic disorder and attention deficit/hyperactivity disorder, unspecified type (Exhibit B.), but those appear to be the diagnoses for the psychiatrist to consider rather than already-diagnosed conditions.

///

///

Analysis of Evidence

23. 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 were persuasive. Claimant did not present a clinical diagnosis from another qualified professional to rebut Dr. Carrillo's diagnosis of attention deficit/hyperactivity disorder and a language disorder with associated borderline delays in adaptive functioning. Dr. McKnight Brown's testimony that Claimant's eligibility classification of autism for special education services is based on less detailed criteria than a clinical diagnosis is correct. For purposes of special education eligibility, "Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences." (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) The DSM-5 has more detailed diagnostic criteria for autism spectrum disorder. The testimony of Claimant's parents and aunt about his unusual behaviors was credited, but did not prove that Dr. Carrillo's diagnosis is incorrect.

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 his 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 he 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 within in the normal range, which suggests he does not have an intellectual disability. (Factual Finding 14.) Based on his evaluation, Dr. Carrillo diagnosed Claimant with attention deficit/hyperactivity disorder, combined presentation, severe; a language disorder; related borderline delays in adaptive skills; and cognitive abilities within the normal range, not with an intellectual disability. (Factual Finding 16.) 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 support such a diagnosis.

4. Claimant also did not prove he has autism. The evidence that he does not have autism spectrum disorder had more persuasive force than the evidence that he does. Claimant tested within the "minimum/no symptoms" range for autism spectrum disorder when evaluated by Dr. Carrillo. (Factual Finding 14.) On the ADOS-2, Claimant received a score "which is well below the threshold for a diagnosis of Autism and well below the threshold for a diagnosis of Autism Spectrum Disorder." (*Ibid.*) The testimony of Claimant's family members about his unusual behaviors does not outweigh Dr. Carrillo's clinical diagnosis, which suggests the behaviors are related to attention deficit/hyperactivity disorder and a language disorder, not to autism spectrum disorder. Furthermore, Claimant's eligibility for special education services under a classification of autism is not a clinical diagnosis of autism spectrum disorder. (Factual Finding 23.)

5. In addition, Claimant did not prove he 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 he has a disabling condition closely related to intellectual disability, or requires treatment similar to that required by individuals with intellectual disability. The attention deficit/hyperactivity disorder and language disorder diagnoses by Dr. Carrillo are not closely related to intellectual disability. Furthermore, "[s]olely psychiatric disorders" and "[s]olely learning disabilities" are excluded from the definition of developmental disability under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1), (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 his burden of proving he has a fifth category condition.

///

///

9. Claimant's family provided persuasive testimony that Claimant displays behaviors of concern. But on this record, Claimant did not establish he 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.