

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2020040611

DECISION

Tara Doss, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on November 5, 2020, in Los Angeles, California.

Dana Lawrence, Fair Hearing and Administrative Procedures Manager, represented North Los Angeles County Regional Center (Service Agency).

Claimant's grandmother (Guardian) represented Claimant. Guardian was Claimant's authorized representative pursuant to Welfare and Institutions Code section 4701.6. Claimant did not attend the hearing. Claimant and his family members are identified by titles to protect their confidentiality.

Oral and documentary evidence was received. The record was closed and submitted for decision on November 5, 2020.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-14 and 16-30; Claimant did not offer any exhibits.

Testimonial: Khanh Ngan Hoang, Ph.D. and Guardian.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is 15 years old and lives with Guardian. On November 25, 2019, Guardian requested regional center services for Claimant under the Lanterman Act. In the request, Guardian indicated Claimant's suspected developmental disabilities were intellectual disability, autism spectrum disorder, and conditions similar to intellectual disability, also known as the "fifth category" of eligibility.

2. On March 10, 2020, Service Agency sent Guardian a letter and a Notice of Proposed Action notifying Guardian of its decision that Claimant was not eligible for

regional center services because he does not have a qualifying developmental disability. (Exh. 1, pp. 23-26.)

3. On April 20, 2020, Guardian filed a fair hearing request on Claimant's behalf to appeal Service Agency's decision that Claimant was not eligible for services. (Exh. 1, p. 27.)

4. On May 4, 2020, Dana Lawrence, Service Agency's Fair Hearing and Administrative Procedures Manager, held an informal meeting with Guardian. Ms. Lawrence and Guardian agreed to seek a continuance of the hearing to allow Service Agency time to obtain and review Claimant's recent school and mental health records. (Exh. 29, pp. 11-12.)

5. On August 13, 2020, Ms. Lawrence sent a letter to Guardian notifying her that the Service Agency's Multidisciplinary Eligibility Determination Committee determined Claimant was not eligible for regional center services because his condition did not meet the legal definition of a developmental disability. (Exh. 30, p. 6.)

6. On August 26, 2020, OAH granted the parties' request to continue the hearing and set the hearing for November 5, 2020.

Claimant's Background

7. Claimant was born after a full-term pregnancy. Claimant's mother (Mother) consumed illegal drugs and alcohol while pregnant with Claimant. Mother was in prison at Claimant's birth, so Claimant lived with Guardian for the first five years of life, except for a few months during infancy that Claimant lived with Mother. According to Guardian, Claimant achieved early developmental milestones within normal time limits. Claimant lived with an aunt from age five to nine and then lived

with Mother from age nine to 12. While living with Mother, Claimant suffered neglect and abuse, and witnessed drug use and domestic violence. Claimant was removed from Mother's home at age 12 and placed in foster care for several months before moving into a group home, where Claimant lived for one year. Around this time, Claimant also spent some time in juvenile hall. He returned to Guardian's home in August 2019 at age 14.

Claimant's Educational Background

8. Claimant initially became eligible for special education services in May 2010, at the age of five, under the category of speech or language impairment. He had articulation, expressive, receptive, and pragmatic language challenges. In fourth grade, he was placed in a special education classroom for language arts, social studies, and science because his challenges with behavior and reading made it difficult for him to participate in a general education classroom. (Exh. 8.)

9. By eighth grade, Claimant had significant academic struggles. He was performing below grade level in reading, writing, and math. He was often absent or late to school, and sometimes refused to do classwork. He was eligible for special education under the category of specific learning disability and received speech and language services to improve the articulation and intelligibility of his speech. (Exh. 14.)

10. At the time of the hearing, Claimant was chronologically in 10th grade but only had enough high school credits to be in ninth grade. Claimant was not on track to graduate on time. Claimant continued to receive special education support under the category of specific learning disability. Claimant's teachers were concerned about his lack of work completion and attendance, especially during distance learning.

Claimant's teachers did not report any behavior issues and reported Claimant successfully completed tasks when Claimant put forth the effort. (Exhs. 21 and 30.)

Previous Regional Center Evaluations

11. Claimant was assessed for regional center services on two previous occasions, in 2010 and 2015. (Exhs. 6 and 10.) Service Agency denied eligibility for services in 2010, and San Gabriel/Pomona Regional Center denied eligibility in 2015. In both instances, Claimant did not meet criteria for having a qualifying developmental disability. (Exhs. 7 and 12.)

12. In September 2010, licensed psychologist Larry Gaines, Ph.D., conducted a psychological evaluation of Claimant to determine if he met criteria for having an intellectual disability or autism. (Exh. 6.) Claimant was five years old at the time of the evaluation. During testing, Claimant had a short attention span, was impulsive, and displayed attention-seeking behavior. On standardized testing, Claimant performed in the low average to borderline ranges of intelligence and adaptive functioning. However, Dr. Gaines concluded Claimant's scores were likely an underestimate of intellectual function and were impacted by his attention challenges. Claimant also demonstrated restricted but not repetitive speech, and articulation issues. Based on the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Dr. Gaines diagnosed Claimant with an unspecified communication disorder and an unspecified learning disorder. Dr. Gaines also gave him a provisional diagnosis of attention deficit hyperactivity disorder, combined type, and borderline intellectual functioning. Dr. Gaines did not recommend eligibility for regional center services.

13. In March 2015, psychologist Edward Frey, Ph.D., conducted a psychological evaluation of Claimant to determine whether he met criteria for having

an intellectual disability or autism spectrum disorder, and qualified to receive services from the San Gabriel/Pomona Regional Center. (Exh. 10.) Claimant was 10 years old at the time of the evaluation. During testing, Claimant sustained attention and motivation to do his best. He engaged in back and forth conversation with Dr. Frey and displayed only mild articulation errors. Dr. Frey did not observe any unusual behaviors or verbalizations. On standardized testing, Claimant performed in the high borderline to average range of intellectual functioning. In adaptive functioning, he performed in the delayed range for communication, the average range for daily living skills, and the borderline range for socialization. Dr. Frey diagnosed Claimant with a language disorder and a speech sound disorder. Dr. Frey concluded Claimant did not meet criteria for an intellectual disability or autism spectrum disorder. Dr. Frey did not recommend eligibility for regional center services.

Current Regional Center Psychological Evaluation

14. On January 2, and 13, 2020, licensed psychologist Alan Golian, Psy. D., conducted a psychological evaluation of Claimant. Dr. Golian issued a written report of the assessment findings on January 23, 2020. (Exh. 17.) Claimant was 15 years old at the time of the evaluation. Claimant's therapist referred him for the evaluation to determine whether his intense fear and worry, panic attacks, sleep difficulties, poor concentration, and aggression were a result of trauma or developmental delays.

15. Claimant arrived at the evaluation appropriately dressed and well-groomed. Claimant made eye contact and engaged in back and forth conversation with Dr. Golian. Claimant could state his basic information, including name, age, grade, and school. Claimant's mood and energy levels were age appropriate. Claimant spoke in complete sentences with no speech abnormalities. Claimant understood Dr. Golian's instructions and followed directions. Claimant's nonverbal behavior was within normal

limits. Claimant cooperated throughout the evaluation and completed all tasks presented.

16. (A) As part of the evaluation, Dr. Golian interviewed Claimant and Guardian, performed a mental status examination, observed Claimant's behavior during testing, reviewed records, and administered the Wechsler Intelligence Scales for Children, Fifth Edition (WISC-V), the Woodcock Johnson Tests of Achievement, Fourth Edition (WJ-IV), the Behavior Assessment System for Children, Third Edition (BASC-3), and the Beck Youth Inventories, Second Edition (BYI-2).

(B) During the interview, Claimant reported involuntary thoughts of distressing memories from living with Mother, living in the group home, and time spent in juvenile hall. Claimant reported trying to avoid feelings or thoughts about this time in his life, often by sleeping. Claimant also reported having passive ideas of suicide approximately one time per month. Guardian reported Claimant was often irritable, especially when discussing past traumas, and that when angry, he would throw objects and punch walls. Guardian also reported Claimant had difficulties with sustaining concentration, fidgeting, completing school assignments, and taking life seriously.

17. (A) Dr. Golian administered the WISC-V to measure Claimant's cognitive abilities. The WISC-V measures five unique areas of cognitive functioning: verbal comprehension, visual-spatial reasoning, fluid reasoning, working memory, and processing speed. Claimant's scores on the five subtests ranged from very low to average. Due to the significant variation in scores, Dr. Golian did not calculate Claimant's full-scale intelligence score. However, his global cognitive abilities were in the low average range, and Dr. Golian concluded the scores suggested his cognitive abilities were at age-expected levels when compared to same-aged peers.

(B) On the Verbal Comprehension Index, which measures word knowledge and verbal reasoning skills, Claimant scored in the very low range and ranked in the seventh percentile when compared to same-aged peers. This score suggested Claimant had limited vocabulary development and verbal reasoning skills.

(C) On the Visual Spatial Index, which measures the ability to analyze and synthesize visual information, Claimant scored in the average range and ranked in the 34th percentile when compared to same-aged peers. This score suggested Claimant had age-appropriate visual-spatial and visual-motor integration skills.

(D) On the Fluid Reasoning Index, which measures the ability to reason using visual information, Claimant scored in the average range and ranked in the 42nd percentile when compared to same-aged peers. This score suggested Claimant's logical reasoning skills were age appropriate.

(E) On the Working Memory Index, which measures short-term memory, Claimant scored in the very low range and ranked in the eighth percentile when compared to same-aged peers. This score suggested Claimant had difficulty attending to visual and verbal information and performing mental operations due to challenges with attention and concentration.

(F) On the Processing Speed Index, which measures attention, concentration, and the ability to process information quickly, Claimant scored in the very low range and ranked in the third percentile when compared to same-aged peers. This score suggested Claimant had difficulty quickly scanning, processing, and discriminating between relevant and irrelevant information.

18. (A) Dr. Golian administered the WJ-IV to measure Claimant's academic functioning. Claimant's broad achievement score, which represented a comprehensive

measure of his skills in reading, reading comprehension, math calculation, math problem-solving, spelling, and writing, was in the extremely low range and ranked in the first percentile when compared to same-aged peers.

(B) On the reading subtests, Claimant struggled significantly with phonics, identifying sight words, reading simple sentences, and understanding the context of what he read. On the math subtests, Claimant had significant difficulty with simple calculations, including addition, subtraction, and multiplication. On the writing subtests, Claimant showed deficits in spelling and in writing quality, age-appropriate sentences.

19. Dr. Golian administered the BASC-3 to Guardian and the BYI-2 to Claimant to obtain information about Claimant's social-emotional well-being and behavioral functioning. Guardian's responses on the BASC-3 indicated he had elevated levels of hyperactivity, depression, attention problems, and withdrawal. Claimant's responses on the BYI-2 showed mildly elevated levels of anger, disruptive behavior, anxiety, and depression. His responses showed moderately elevated levels of self-concept, such as low self-worth. Claimant reported feeling sad most of the time and having anxiety about being in public or communicating with others because he feared it would upset him.

20. Based on clinical observations, review of records, test data, and information from Guardian, Dr. Golian diagnosed Claimant with post-traumatic stress disorder, major depressive disorder, disorders in reading, math, and written expression, and a rule-out of attention deficit hyperactivity disorder. Further, Dr. Golian concluded Claimant's symptoms and behaviors were likely not due to any intellectual deficits.

21. Dr. Golian recommended therapeutic, behavioral, and academic interventions to help Claimant. Dr. Golian did not recommend eligibility for regional center services.

Current Regional Center Social Assessment and Medical Summary

22. On February 5, 2020, Veronica Salinas conducted a social assessment of Claimant to assist in determining whether Claimant was eligible for regional center services. (Exh. 18.) Ms. Salinas did not identify any medical, motor, self-care, cognitive, or communication concerns. Ms. Salinas recommended securing Claimant's medical and school records and scheduling medical and psychological evaluations before determining eligibility for regional center services.

23. On February 11, 2020, Carlo DeAntonio, M.D., F.A.A.P., reviewed Claimant's medical records and issued a written summary. Claimant's records did not suggest the presence of a chronic medical condition, cerebral palsy, or epilepsy.

24. On March 9, 2020, Service Agency's Multidisciplinary Committee determined Claimant was not eligible for regional center services because he did not have a developmental disability. (Exh. 20.) The committee, which consisted of a psychologist, two medical doctors, and an intake specialist, relied on Dr. Golian's psychological evaluation, Dr. DeAntonio's medical summary, and Ms. Salinas's social assessment to make this determination. In a March 10, 2020 letter, Service Agency informed Guardian of the committee's determination and reviewed the criteria for having a developmental disability as defined by the Lanterman Act. (Exh. 1, p. 23.)

Service Agency's Evidence

25. Khanh Ngan Hoang, Ph.D., was the psychologist on the Multidisciplinary Committee that denied Claimant's eligibility for regional center services. Dr. Hoang holds a doctorate degree in clinical psychology and is licensed to conduct psychological evaluations. As a staff psychologist with Service Agency, Dr. Hoang regularly reviews applications from individuals seeking eligibility for regional center services and conducts regional center evaluations. (Exh. 2.)

26. Dr. Hoang testified at hearing. In preparation for the testimony, Dr. Hoang reviewed Claimant's prior psychological, therapeutic, and school records. Dr. Hoang testified that Service Agency relied on the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), when it determined Claimant did not meet criteria for an intellectual disability or autism spectrum disorder. The DSM-5 is a manual that describes the diagnostic criteria for various mental disorders and illnesses.

27. Pursuant to the DSM-5, intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits. Specifically, an intellectual disability diagnosis requires the following three criteria be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for

personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(Exh. 25, p. 4.)

28. Pursuant to the DSM-5, autism spectrum disorder requires an individual to display the following:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by, for example, deficits in social-emotional reciprocity, deficits in nonverbal communicative behaviors used for social interactions, and deficits in developing, maintaining, and understanding relationships.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: stereotyped or repetitive motor movements, use of objects, or speech; insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; highly restricted, fixated interests that are abnormal in intensity or focus; or hyperactivity or

hyporeactivity to sensory input or unusual interest in sensory aspects of the environment.

C. Symptoms must be present in the early developmental period.

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 or global developmental delay.

(Exh. 24, pp. 4-5.)

29. In Dr. Hoang's opinion, the records did not indicate Claimant had an intellectual disability or autism spectrum disorder. Dr. Hoang opined Claimant did not meet criteria for intellectual disability because Dr. Golian's evaluation showed his cognitive abilities ranged from very low to average, with global cognitive abilities in the low average range. Dr. Hoang opined Claimant did not meet criteria for autism spectrum disorder because there was no indication in Claimant's records, including Dr. Golian's evaluation, that he had the disorder. Instead, Dr. Hoang opined that Claimant's social-emotional and educational challenges were better attributed to instability in Claimant's home and family life, as well as learning disabilities.

30. Dr. Hoang's testimony supported Service Agency's determination that Claimant did not qualify as an individual with a developmental disability, and also opined that Claimant did not meet criteria for Service Agency's "fifth category" of eligibility. Dr. Hoang's testimony demonstrated thorough knowledge of Claimant's

developmental history and was consistent with documentary evidence. Dr. Hoang's testimony was credible and persuasive, and was therefore, given significant weight.

Claimant's Evidence

31. Guardian testified at the hearing. Guardian was concerned about Claimant's ability to care for himself as an adult. Guardian opined that Claimant has autism spectrum disorder and an intellectual disability because Claimant cannot comprehend simple tasks, has no concept of money management, and needs constant reminders. Guardian admitted Claimant has never been diagnosed with autism spectrum disorder or an intellectual disability.

32. Guardian admitted to being overwhelmed with trying to get help for Claimant. Guardian expressed concern regarding his withdrawn behavior and depression symptoms, especially when he became outraged and resorted to throwing things and using profanity. Guardian reported Claimant had recently been diagnosed with bipolar disorder and was refusing medication.

LEGAL CONCLUSIONS AND ANALYSIS

1. This matter is governed by the Lanterman Act, set forth at Welfare and Institutions Code section 4500 et seq., and the implementing regulations set forth at California Code of Regulations, title 17, section 54000 et seq.

2. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore, jurisdiction for this case was established. (Factual Findings 1-6.)

3. Generally, when a person seeks to establish eligibility for government benefits or services, the burden of proof is on that person to prove, by a preponderance of the evidence, that he or she meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [¶] The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, citations omitted.)

4. To establish eligibility for regional center services, a person must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (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." California Code of Regulations, title 17, section 54000, defines a developmental disability as "a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or other conditions similar to intellectual disability that require treatment similar to that required by individuals with an intellectual disability." Conditions similar to intellectual disability are often referred to as the "fifth category."

5. A more specific definition of "fifth category" conditions is not provided in the statutes or regulations and is intentionally broad so that it may include unspecified conditions and disorders. However, the condition must be closely related or require treatment similar to intellectual disability. "The fifth category condition must be very similar to mental retardation [the prior diagnostic term for intellectual disability], with many of the same, or close to the same, factors required in classifying a person as

mentally retarded." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

6. (A) For purposes of establishing eligibility under the Lanterman Act, the term "developmental disability" excludes disabling conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c); Welf. & Inst. Code, § 4512, subd. (a).)

(B) "Solely psychiatric disorders" are those where there is impaired intellectual 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. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

(C) "Solely physical in nature" refers to disabling conditions that 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 intellectual disability. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

7. California Code of Regulations, title 17, section 54001, subdivision (a) defines "substantial disability" as:

A. 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

B. 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; and (G) economic self-sufficiency.

8. The term "cognitive" means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience. (Cal. Code Regs., tit. 17, § 54002.)

9. When determining whether an individual meets the Lanterman Act's definition of developmental disability, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources. (Welf. & Inst. Code, § 4643, subd. (b).)

10. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the [California Department of Developmental Services] and [regional center] professionals' determination as to whether an individual is developmentally disabled." (*Mason, supra*, 89 Cal.App.4th at p. 1127.)

11. The preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services. Claimant does not have a disabling condition that meets the definition of "developmental disability" under

Welfare and Institutions Code section 4512, subdivision (a). The evidence did not establish Claimant is substantially disabled due to autism, epilepsy, cerebral palsy, intellectual disability, or a "fifth category" condition.

12. Claimant has been evaluated for regional center services three times over the last 10 years. Each time, Claimant was denied eligibility because he did not meet the criteria for having a developmental disability. Claimant has a history of social-emotional challenges that appear to be the result of a traumatic history with Mother and his experience in a group home and juvenile hall. Claimant also has a history of learning challenges that appear to be the result of specific learning disabilities and not intellectual disability. Dr. Golian's psychological evaluation showed Claimant's global cognitive ability to be in the low average range. Thus, Claimant does not have a major impairment of cognitive functioning. Finally, there was no evidence that Claimant meets criteria for autism spectrum disorder or any other qualifying condition.

13. Based on the foregoing, Claimant is not eligible for regional center services under the Lanterman Act. (Factual Findings 1-3; Legal Conclusions 1-13.)

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ORDER

Claimant's appeal is denied. North Los Angeles County Regional Center's determination that Claimant is not eligible for services under the Lanterman Act is affirmed.

DATE:

TARA DOSS

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.