

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

In the Matter of:

CLAIMANT

vs.

REDWOOD COAST REGIONAL CENTER, Service Agency

OAH No. 2020060362

DECISION

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on July 20, 2020, by telephone conference.

Kathleen Kasmire represented Redwood Coast Regional Center (RCRC), the service agency.

Claimant was represented by his parents. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on July 20, 2020

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Procedural Background

1. Claimant is 17 years old and lives with his family. He attends a public high school.
2. In February 2020, claimant's mother contacted RCRC to request eligibility for her son based on intellectual disability, noting that previous testing reflected a low IQ score.
3. RCRC Intake Specialist Morgan Knight met with claimant and his mother on February 13, 2020, for an interview. Releases authorizing RCRC to collect records were provided.
4. The eligibility team met to review the evidence and determined that claimant did not satisfy the eligibility criteria. RCRC issued a Notice of Proposed Action to claimant's family on April 28, 2020, stating that claimant was found ineligible. A Fair Hearing Request was sent on May 22, 2020, challenging RCRC's determination.

Diagnostic Criteria for Intellectual Disability

5. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5), defines intellectual disability as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." The following criteria must be met for a diagnosis of intellectual disability:

- 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.

Expert Reports

BOYD REPORT

6. Psychologist Bruce D. Boyd, Ph.D., performed an assessment of claimant's intellectual and adaptive function on May 7, 2018, and wrote a report with his findings dated July 16, 2018. The purpose of the assessment was to determine claimant's eligibility for developmental disabilities services in Oregon. Claimant was 15 years and 2 months old at the time of the evaluation.

7. Dr. Boyd administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). This assessment resulted in a full scale IQ of 71, based on the following scores: Verbal Comprehension (62); Visual Spatial (94); Fluid Reasoning (82); Working Memory (76); and Processing Speed (103).

Claimant's adaptive functioning was assessed by the report of his mother using the Vineland Adaptive Behavior Scales, Third Edition. Claimant's composite score of 66 placed him in the "mild range of adaptive impairment."

8. Dr. Boyd diagnosed claimant with "mild intellectual disability." As a result of Dr. Boyd's evaluation, claimant was deemed "provisionally" eligible for Oregon developmental disability services based on intellectual disability, with his eligibility to be re-assessed at age 18.

SANCHEZ REPORT

9. Psychologist Ubaldo F. Sanchez, Ph.D., performed a psychological evaluation of claimant for the purpose of determining regional center eligibility on February 24, 2020, and authored a report with his findings dated March 20, 2020.

Dr. Sanchez has been working with individuals with developmental disabilities for 27 years and has been performing evaluations for regional center eligibility for 15 years. He evaluated claimant's intellectual functioning by administering the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV). The results of the WAIS-IV reflected a full scale IQ of 78, based on the following scores: Verbal Comprehension (72); Perceptual Reasoning (94); Working Memory (69); and Processing Speed (92). Dr. Sanchez described this score as reflecting the "higher limits of the borderline range of measured intelligence."

Claimant's adaptive functioning was assessed with the Adaptive Behavior Assessment System, Third Edition (ABAS-3), through questionnaires provided to claimant's mother and teacher of two years. The assessment by claimant's mother resulted in a General Adaptive Composite score of 26, which is "extremely low." Because claimant's teacher did not complete two sections of the ABAS-3

questionnaire, there was no General Adaptive Composite score. Her assessments in the areas of self-care, self-direction, and social were classified as "average."

Dr. Sanchez concluded that claimant is impaired in the realms of communication, community use, functional pre-academic, home living, health and safety, self-care, self-direction, and social skills. He did not describe the level of impairment.

10. Dr. Sanchez also assessed claimant for autism spectrum disorder, using the Autism Diagnostic Observation Scale, Second Edition, and the Social Responsiveness Scale, Second Edition.

11. Dr. Sanchez concluded that claimant did not satisfy the diagnostic criteria for autism spectrum disorder or intellectual disability. Dr. Sanchez made the following diagnoses: 1) other specified neurodevelopmental disorder associated with in-utero exposure to alcohol and controlled substances¹; 2) specific learning disorder with impairment in reading, moderate; 3) impairment in mathematics, moderate; and 4) impairment in written expression, moderate.

Dr. Sanchez concluded that claimant has severe learning disabilities, likely due to in utero drug exposure. He believes claimant might also have attention deficit hyperactivity disorder (ADHD), which is common in individuals exposed to drugs in utero, and he recommended that the family have claimant professionally assessed for ADHD.

¹ Claimant was adopted; it is suspected that his birth mother abused drugs during the pregnancy.

12. Dr. Sanchez explained at hearing that he did not believe the 2018 assessment by Dr. Boyd was significantly different than Dr. Sanchez's assessment in 2020. Dr. Sanchez noted that he used the adult scale of the Wechsler test; Dr. Boyd used the child scale because claimant was 15 years old at the time. The most significant difference was in the realm of verbal comprehension, where there was a 10-point discrepancy. He speculated that the higher score in 2020 could reflect greater "stability" in claimant's life. Dr. Sanchez explained that an individual can test lower than his or her abilities on a "bad day," but that it is not possible to test higher than one's abilities.

In performing his evaluation, Dr. Sanchez did not have recent school records or claimant's adoption records.

13. Dr. Sanchez saw no evidence that claimant has ever been diagnosed or suspected to have autism spectrum disorder.

DR. DRUCKER

14. Psychologist Gerald Drucker, Ph.D., was on the eligibility team. He is a psychologist who has been working with individuals with developmental disabilities for more than 30 years. Dr. Drucker reviewed the evidence and agreed that claimant did not qualify for regional center services. He found the testing to be consistent, with the exception of the 10-point discrepancy in verbal comprehension between Dr. Boyd's and Dr. Sanchez's assessments. Dr. Drucker opined that Dr. Boyd's report focused on claimant's weak areas and did not address his strengths. Dr. Drucker does not believe further testing of claimant is warranted for determining regional center eligibility.

School Records

15. Claimant received special education services in Oregon based on learning disability and expressive language disorder. Assessment records from the Yamhill Carlton School District in Oregon reflect that in 2015, claimant was found not to meet determination criteria for communications disorder. In 2016, claimant was found to meet the determination criteria for specific learning disability. It was noted that claimant did not meet grade-level standards in basic reading skills, reading fluency skills, reading comprehension, and written and oral expression.

Parents' testimony

16. Claimant was adopted at the age of 7. He was delayed in speech and has received special education services since kindergarten. Claimant currently attends a public high school, with an individualized education program. He will be a senior during the upcoming academic year. Claimant's parents reported that he struggles in school and that his 12-year-old brother helps him with his homework.

17. Claimant will be turning 18 early next year, and his parents are seeking regional center eligibility because they are concerned that he needs support to live independently. Claimant's parents reported that he needs constant supervision due to his impaired intellectual functioning. He needs help with activities of daily living such as using the microwave. He needs reminders to brush his teeth, bathe, buckle his seatbelt, and go to bed.

18. Claimant's parents strongly believe that claimant needs support and learning opportunities in order to be independent and safe. They related incidents reflecting claimant's lack of understanding or attention to personal safety, including

trying to play with live electrical lines when construction was being done at the home and sawing on a branch he was sitting on.

They further reported that claimant does not understand right and wrong. After claimant destroyed a neighbor's surveillance camera in Oregon, he was assessed as part of the restorative justice program and found not to be competent for trial.

19. Claimant's parents reported that he has difficulty communicating outside of the family. He struggles finding words and often gets frustrated and says "never mind." They also reported that he does not understand money, and has been taken advantage of by his peers. They report that claimant's 12-year-old and 16-year-old brothers both help him access the community safely.

20. Claimant's parents contend that RCRC made its assessment based on inaccurate and incomplete information. They are frustrated that the assessment was made without current school records and without interviewing anyone other than claimant and his mother. In addition, RCRC did not have records from the restorative justice assessment from Oregon.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial

statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. A developmental disability is a disability which originates before an individual attains age 18, is likely to continue indefinitely, and constitutes a substantial disability for that individual. (Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term "developmental disability" includes intellectual disability, autism, epilepsy, cerebral palsy, and what is commonly referred to as the "fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) The fifth category was created "to allow some flexibility in determining eligibility so as not to rule out eligibility of individuals with unanticipated conditions, who might need services." (*Mason v. Office of Admin. Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities, or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

Pursuant to section 4512, subdivision (l), the term "substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency."

3. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Act.

4. The evidence did not establish that claimant has ever been diagnosed with autism spectrum disorder.

5. The evidence established that in 2018, claimant was diagnosed by Dr. Boyd with "mild intellectual disability." Dr. Sanchez assessed claimant in 2020 and determined that he did not meet the diagnostic criteria for intellectual disability. His report and testimony were persuasive. The evidence did not establish that claimant has intellectual disability.

6. The Association of Regional Center Agencies has promulgated Guidelines for determining fifth category eligibility. These Guidelines provide that individuals in the low borderline range of intelligence (IQ scores ranging from 70-74) may sometimes qualify for fifth category eligibility. For eligibility on this basis, the individual must demonstrate substantial adaptive deficits which are related to the cognitive limitations.

7. The evidence established that claimant has adaptive functioning impairments, but did not establish significant functional limitations in three of the relevant areas of major life activity. He has received speech and language special education services, but the evidence did not establish significant functional limitations in expressive and receptive speech. His deficits in the realm of learning have been deemed to be caused by a learning disability and not by an intellectual disability. The reports by his parents regarding deficits in self-care, self-direction, and capacity for independent living did not demonstrate that he is significantly impaired in these realms. The evidence did not establish that claimant satisfies the eligibility criteria under the fifth category.

8. Claimant has failed to meet his burden of establishing that he is eligible for regional center services.

ORDER

Claimant's appeal is denied.

DATE:

KAREN REICHMANN
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.