

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

OAH No. 2020080527

DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on January 28, 2021, by videoconference and telephone.

Paula Spano, Attorney at Law, represented claimant, who was present.

James Elliott represented San Andreas Regional Center, the service agency.

The record closed and the matter was submitted for decision on January 28, 2021.

ISSUE

Is claimant's autism substantially disabling, such that he has significant functional limitations in three or more areas of major life activity?

FACTUAL FINDINGS

1. Claimant is 29 years old. He lives, mostly alone, in a house owned by his parents. Claimant self-referred to San Andreas Regional Center (SARC) for an assessment of regional center eligibility on a date not established by the record. SARC issued a Notice of Proposed Action on July 28, 2020. The Notice of Proposed Action set forth the determination by SARC that claimant was not eligible for regional center services because he did not have a substantially handicapping developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Act). SARC received claimant's Fair Hearing Request on August 14, 2020.

2. Claimant maintains that he is eligible for services because he suffers from autism and is substantially disabled by this condition.

3. Claimant was diagnosed with autism in childhood on a date not established by the record. SARC concedes that claimant has autism but maintains that claimant's autism is not substantially disabling, because he does not have significant functional limitations in at least three of the seven areas of major life activity. Those seven areas are mobility, receptive and expressive communication, independent living, self-direction, learning, self-care, and economic self-sufficiency.

Criminal Case

4. Claimant was charged with violating Penal Code section 646.9, subdivision (b) (stalking), a felony, in the Superior Court of California, County of San Mateo.

5. Claimant admitted the facts underlying the case in interviews with police and in superior court during a hearing regarding a restraining order. Those facts are relevant to the issue of claimant's level of adaptive functioning.

In 2008 claimant was "friended" on a social media site by a then 13-year-old female living in Tennessee. After communicating with the victim via social media (using a false name), claimant then moved to Tennessee to be near her. Claimant accosted the victim at her high school and chased her to her car. Charges were filed in Tennessee and a protective order was issued.

Claimant and the victim had no interaction between 2010 and 2015. Claimant then began communicating with the victim via Facebook. In 2016, while the victim was attending college in Virginia, claimant attempted to obtain the victim's contact information.

In August 2017, the victim moved to an address in San Jose, California, and the following year moved to a second address in San Jose. On April 15, 2019, claimant went to the victim's first San Jose address and questioned her former roommate about the victim's whereabouts. On April 21, 2019, claimant showed up at the victim's current address. When interviewed by the police, claimant admitted that he had used an internet search site to obtain her address. Claimant used the victim's date of birth, which he had obtained from prior court paperwork he had. Claimant also admitted that he had called auto dealerships to determine the victim's current address. Claimant

also used a watch equipped with a camera lens to take pictures of the victim's residences.

Competency Assessments

6. Claimant was evaluated by court order for his competency to stand trial in his criminal case.

7. On October 10, 2019, claimant was interviewed by psychiatrist George Bach-Y-Rita, M.D. Claimant was accompanied to the interview by his parents, who were also interviewed. Dr. Bach-Y-Rita issued a report of his evaluation of claimant dated October 18, 2019. Dr. Bach-Y-Rita reviewed claimant's school and medical records, the felony complaint and associated police reports, and the transcript of the preliminary hearing conducted in the superior court, prior to his evaluation of claimant. Dr. Bach-Y-Rita noted that claimant was appropriately groomed, and was able to understand all the conversation and language used during the interview.

8. During the interview, claimant spoke of his loneliness and lack of friends. Claimant said he used his savings to travel to the victim's residence in Tennessee, hoping to start a new life and be independent. He then used his savings again to follow the victim to Virginia, where he stayed in a hotel.

9. Claimant lives alone during the week in a house owned by his parents. His parents visit on the weekend and his mother cooks food for him. Claimant also told Dr. Bach-Y-Rita that he does not cook for himself and that he does not own a car. Dr. Bach-Y-Rita diagnosed claimant with autism and opined that without support claimant would continue to misinterpret social cues and lack empathy for other's feelings. Dr. Bach-Y-Rita believed the prognosis for improved functioning was good if claimant's deficits were properly addressed. Dr. Bach-Y-Rita found that the principal

barrier to improvement was claimant's pessimism regarding his criminal case. Dr. Bach-Y-Rita found that claimant was not competent to stand trial.

10. On December 2, 2019, claimant was interviewed by psychologist David F. Berke, Ph.D. Dr. Berke prepared a report of his evaluation dated December 10, 2019. In his report, Dr. Berke noted that claimant was a high-functioning autistic man. Dr. Berke stated that claimant was appropriately groomed, oriented to time and place and able to understand and answer questions.

During the interview, claimant stated he could read and write and has a high school certificate. Claimant claimed he had never been employed but that he had been rejected for serving in the military, which he had attempted because he wanted to serve his country. Claimant was anxious about being convicted of a felony, as it would hinder his employment opportunities.

Dr. Berke saw some signs of claimant's autism during the interview including an inability to maintain eye contact, impaired insight, and sometimes inappropriate answers to questions. Dr. Berke opined that claimant was severely socially isolated and had an impaired ability to empathize. Dr. Berke found that claimant was not competent to stand trial.

SARC Eligibility Assessment

11. The SARC assessment team, consisting of psychologist Daniel Cohen, Ph.D., and intake service coordinator Anna Padilla-Rocha, evaluated claimant's eligibility for services on June 22, 2020. Due to the COVID-19 pandemic, the interview was conducted via videoconference. Claimant appeared alone during the intake interview. Dr. Cohen issued a report of his eligibility evaluation of claimant and

testified at hearing regarding the basis for his opinion that claimant was not eligible for services.

12. Dr. Cohen has been a staff psychologist with SARC for two years. He has participated in more than 120 eligibility determinations. In performing his assessment, Dr. Cohen reviewed claimant's records including the report by Dr. Berke and the report by Dr. Bach-Y-Rita. Dr. Cohen also administered the Mini Mental Status Exam and the Adaptive Behavior Assessment System-3 (ABAS-3).

13. During the intake interview, claimant appeared appropriately groomed, and made minimal eye contact. Claimant reported that he lives at his parents' home and that he maintains it. Claimant stated that he can independently take care of all his self-care needs and that he spends extended periods of time alone. Claimant reported that he has a driver's license and actively drives. Claimant stated that he opened a bank account by himself. Claimant also stated that his cooking skills are limited but that he is able to use the microwave to heat up food and he is able to shop for food for himself.

14. Dr. Cohen noted that claimant seemed oriented to time and place and was able to understand and communicate. Dr. Cohen also noted discrepancies between claimant's self-reporting of his adaptive skill areas in the ABAS-3 and the intake interview and behavioral observations. Some examples of the discrepancies are: claimant stated he was unable to answer the telephone by saying hello but greeted the intake social assessment team with "hi"; claimant stated he is unable to carry small amounts of money but claims he purchases fast food to eat; claimant stated he is unable to use the internet to get books or reference material but was computer-savvy enough to independently connect remotely via computer for the intake interview.

15. Dr. Cohen conceded that claimant has a diagnosis of autism (an eligible condition) and that claimant had significant functional limitations in the area of economic self-sufficiency. Dr. Cohen explained that while claimant does have deficits in some of the other areas of major life activity, those deficits do not rise to the level of substantial disability as defined in the Act.

16. Dr. Cohen reported that claimant was ambulatory without need of assistive devices and therefore had no disability in the domain of mobility. Claimant was able to hold a conversation with the intake team and Dr. Cohen noted that records indicated claimant was able to hold conversations in both English and Spanish and therefore he was not substantially disabled in the domain of receptive and expressive communication. Dr. Cohen remarked that claimant's stalking behavior showed an ability to discover, plan, and move to be near the victim, showing both a functional level of sophistication and independent living skills. Dr. Cohen noted that claimant lives alone, caring for his parents' home. He dresses and feeds himself independently and therefore claimant is not substantially disabled in the domains of independent living and self-direction. Dr. Cohen noted that claimant takes care of all his hygiene tasks without prompting and therefore claimant is not substantially disabled in the domain of self-care.

Testimony of Dr. Bach-Y-Rita

17. Dr. Bach-Y-Rita testified at hearing that claimant was eligible for regional center services based on his autism diagnosis. Dr. Bach-Y-Rita conceded that the evaluation he conducted was not focused on the criteria for eligibility for regional center services.

18. Dr. Bach-Y-Rita opined that because of claimant's autism he had significant functional limitations in six of the seven areas of major life activity. Dr. Bach-Y-Rita cited claimant's inability to live completely independently of his parents as a basis for stating claimant has significant functional limitations in the area of independent living and self-direction. Dr. Bach-Y-Rita cited claimant's lack of cooking skills as evidence that claimant has significant functional limitations in the area of self-care. Dr. Bach-Y-Rita stated claimant's inability to accept "no" from the victim of his stalking behavior was evidence that he has significant functional limitations in the areas of self-direction and learning. Dr. Bach-Y-Rita cited claimant's receipt of Supplemental Security Income (SSI) benefits as evidence that claimant has significant functional limitations in the area of economic self-sufficiency.

As to the remaining areas, Dr. Bach-Y-Rita concluded that claimant's autism in and of itself left him with significant functional limitations. Dr. Bach-Y-Rita opined that claimant could benefit from regional center services and was eligible, although he admitted that he did not know the definition of substantial disability as defined in the Act.

Ultimate Factual Findings

19. It is undisputed that claimant has autism, which is a qualifying diagnosis for regional center services.

20. Dr. Bach-Y-Rita determined that claimant's autism substantially disabled him in six of the seven major life domains. Dr. Cohen concluded that claimant's autism substantially disabled him in only one of the seven major life domains. Dr. Cohen's testimony was more persuasive than that of Dr. Bach-Y-Rita. First, Dr. Bach-Y-Rita's evaluation of claimant was in the context of determining whether he was competent to

stand trial, which is a different question than whether he is eligible to receive lifetime regional center services under the Lanterman Act. (Factual Finding 8.) Second, Dr. Bach-Y-Rita acknowledged that he did not know the Act's definition of substantially disabled. (Factual Finding 12.) Third, the abilities described and shown by claimant during the multiple interviews and assessments and demonstrated by his actions support the opinion of Dr. Cohen. Accordingly, it has not been established by a preponderance of the evidence that claimant is substantially disabled by his autism.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Act. The Act is found at Welfare and Institutions Code¹ section 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

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded² Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a person’s age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met his burden of establishing that he is eligible for regional center services. Claimant has a diagnosis of autism and he has significant functional limitations in the area of economic self-sufficiency. (Factual Findings 19-20.) However, claimant has not established that he is substantially disabled due to

² The term “intellectual disability” has replaced the formerly used term of “mental retardation.”

significant functional limitations in any of the remaining areas of major life activity The evidence demonstrated that claimant does have deficiencies in some of those areas, but those deficits are not severe enough to be considered a substantial disability under the Lanterman Act. (Factual Finding 20.)

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE:

TRACI C. BELMORE
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.