

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020090356**

**DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference on July 13, 2021. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who did not participate in the hearing, was represented by his mother.<sup>1</sup>

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<sup>1</sup> Titles are used for claimant and his family to protect their privacy.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (service agency).

## **ISSUE**

Was the service agency's original determination in 2015 that claimant has a developmental disability clearly erroneous, allowing the service agency to terminate claimant's regional center services?

## **EVIDENCE RELIED ON**

In making this Decision, the ALJ relied on service agency exhibits 1-10 (claimant submitted no exhibits) and the testimony of claimant's mother (service agency presented no witnesses).

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. The service agency 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.)

2. Claimant is a 14-year-old male who has received regional center services since the service agency deemed him eligible for them in 2015 based on a diagnosis of intellectual disability. As described in greater detail below, in 2019 the service agency

conducted a reassessment of claimant and in 2020 concluded the initial diagnosis was clearly erroneous because claimant does not have a developmental disability.

3. On August 20, 2020, the service agency issued a Notice of Proposed Action and a Notice of Termination of Eligibility, advising claimant's mother its initial assessment of claimant's eligibility was clearly erroneous because claimant does not have a developmental disability, and therefore he is no longer eligible for services.

4. On or about September 1, 2020, claimant's mother submitted the Fair Hearing Request on behalf of her son, in which she appealed the service agency's proposal to terminate claimant's services.

5. Four times claimant's mother requested and obtained a continuance of the hearing for more time to have claimant independently assessed. In connection with her requests, claimant's mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

### **Claimant was Deemed Eligible for Services in 2015**

6. In 2014, claimant was referred to the service agency for a determination whether he was eligible for regional center services. (Ex. 5, p. 46.) Among other actions, the service agency referred claimant to Roberto De Candia, Ph.D., for an evaluation.

7. Dr. De Candia evaluated claimant in February 2015. At the time, claimant was eight years old and in the third grade. He already was receiving special education services at school. Dr. De Candia conducted a full psychological evaluation of claimant, including administering several commonly accepted cognitive and adaptive tests. Dr. De Candia also interviewed claimant and his mother.

8. A. Dr. De Candia issued a report from his evaluation. He scored claimant's intellectual functioning tests as being scattered, which he attributed to claimant's problems with attention and concentration. Dr. De Candia scored claimant's overall intellectual functioning as within the lower limits of the borderline range of intellectual functioning.

B. Dr. De Candia scored claimant's adaptive functioning as being significantly below the average range.

C. Dr. De Candia scored claimant's affective behaviors as not supporting the presence of an autism spectrum disorder (ASD).

D. Based on his evaluation, Dr. De Candia diagnosed claimant with Borderline Intellectual Functioning and an unspecified Attention Deficit Hyperactivity Disorder (ADHD). However, Dr. De Candia noted the ADHD diagnosis needed further and specific evaluation to confirm or rule out the condition.

E. Dr. De Candia made several recommendations, including that claimant was eligible for regional center services. However, Dr. De Candia also cautioned, "[Claimant] will benefit from a reevaluation in 3 years' time in order to again review the long-term validity of the above diagnoses and to again review regional center eligibility." (Ex. 5, p. 50.)

9. Dr. De Candia wrote the March 23, 2015 note below explaining his diagnosis to Deborah Langenbacher, a psychologist employed by the service agency. The note indicates Dr. De Candia's uncertainty of his diagnosis:

Results from the Fluid Reasoning scores are too high to outright say mild ID [intellectual disability]. However, the

overall adaptive functioning is still pretty low, the full scale IQ is pretty low, and I believe that he continues to be closer to the range of ID, rather than outright borderline intellectual functioning. He was quite cooperative and during the session he did not give me any reason to suspect for the presence of ASD. He was also very active, he had difficulty staying on task, and I think that his difficulties with attention may be associated with ADHD. I do think that his overall functioning is still too low, but he has made progress and if the progress continues he may at some point involved [sic] out of the ID diagnosis, of course this is only a guess.

(Ex. 5, p. 53.)

10. Based on Dr. De Candia's evaluation, the service agency deemed claimant eligible for services based on the developmental disability of ID. (Ex. 3, p. 25.)

### **Onset of Behavioral Problems in 2019**

11. In June 2019, claimant was referred to the service agency's Bio-Behavioral Consultation Clinic (BBC Clinic) for a medication review. At the time, claimant reported he was hearing voices telling him to engage in certain behaviors. The BBC Clinic recommended pursuing behavior intervention services and/or social skills training. (Ex. 4.) In August 2020, claimant had a follow-up consultation at the BBC Clinic based on the same concerns. The same recommendations were made. (*Ibid.*) It is not clear from the record whether those services were provided or, if so, continued during the COVID-19 pandemic.

## **Claimant's Special Education Services**

12. Claimant was first deemed eligible for special education services by the Pomona Unified School District (District) on August 29, 2011, based on categories other than an ID or autistic-like behaviors. (Ex. 10.)

13. Claimant received a Psychoeducational Evaluation by the Pomona Unified School District (District) in 2017. The report states claimant's intellectual abilities were within the low average range. He was identified as having significant speech and language delays. (Ex. 9.)

14. Claimant also received a Speech and Language Evaluation by the District in 2017. The report indicates claimant's expressive language skills were slightly below average and that his comprehension skills were at the borderline range of delay. (Ex. 8.)

15. In May 2018, the District issued claimant's annual Individualized Education Program (IEP). Claimant was 11 years old and in the sixth grade at the time. The IEP indicates claimant was then eligible for special education services under the primary category of Specific Learning Disability and the secondary category of Speech and Language Impairment. (Ex. 10.)

## **Service Agency Reassesses Claimant**

16. In 2019, the service agency decided to reassess claimant's eligibility for services due to Dr. De Candia's prior recommendation to do so within three years. As part of that process, claimant was referred to Thomas L. Carrillo, Ph.D. (Ex. 6.)

17. On November 17, 2020, Dr. Carrillo conducted a full psychological evaluation of claimant. Claimant was 13 years old. As part of his evaluation, Dr. Carrillo

administered several commonly accepted cognitive and adaptive tests. Dr. Carrillo also interviewed claimant and his mother, and he reviewed pertinent records, including the special education reports described above. (Ex. 6.)

18. A. Dr. Carrillo issued a report of his evaluation. He scored claimant's cognitive and intellectual functioning tests as ranging from borderline to normal. Dr. Carrillo scored claimant's overall intellectual functioning tests as within the low normal range. (Ex. 6.)

B. Dr. Carrillo scored some of claimant's adaptive functioning tests as within the low normal range. He scored claimant's communication skills to be within the borderline range of delay; however, Dr. Carrillo believes those results qualify claimant for a diagnosis of a Language Disorder. In fact, Dr. Carrillo commented in his report that he saw claimant's adaptive delays as being secondary to his communication deficits. (Ex. 6.)

C. In the realm of social and behavioral functioning, it was clear to Dr. Carrillo that claimant displayed some autistic-like behaviors, but those behaviors were not frequent or intense enough to surpass the threshold for an ASD diagnosis. Dr. Carrillo also noted that further evaluations may be warranted if claimant's behaviors increase, intensify, and/or became more frequent. (Ex. 6.)

D. Based on his evaluation, Dr. Carrillo diagnosed claimant with ADHD, Predominantly Inattentive Presentation, Mild; and a Language Disorder. Dr. Carrillo described claimant's cognitive abilities as within the low normal range. (Ex. 6.)

E. Dr. Carrillo recommends claimant continue to receive special education services to address his ADHD and Language Disorder. (Ex. 6.)

19. On August 19, 2020, the service agency's Eligibility Team met to discuss claimant's case. Dr. Langenbacher was a member of the team. Based on the information described above, particularly Dr. Carrillo's report, the team concluded claimant did not have ID or any other developmental disability and therefore he was no longer eligible for regional center services. (Ex. 7.)

### **Claimant's Evidence**

20. Claimant's mother testified she was unable to get an independent evaluation of her son. She has been too busy at work to find someone qualified; getting an appointment was further complicated by restrictions from the COVID-19 pandemic. She still is interested in getting such an evaluation.

21. Claimant's younger brother has a developmental disability and is a service agency consumer. Claimant's mother believes claimant and his younger brother have similar deficits and behaviors, which leads her to believe claimant has a developmental disability.

22. Claimant's mother testified a healthcare professional once told her claimant lacks eye contact, does not follow directions, and has comprehension problems. She also testified claimant was mainstreamed in a regular classroom, but he was returned to a special day class due to his poor performance. Claimant's mother believes these incidents also demonstrate claimant has a developmental disability.

## LEGAL CONCLUSIONS

### Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.<sup>2</sup>) An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant timely requested a hearing, so jurisdiction for this appeal was established.

2. When a regional center seeks to terminate services provided to a consumer, it bears the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

3. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

### Eligibility for Services

4. An individual is eligible for services under the Lanterman Act if he can establish he is suffering from a substantial disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category. (§ 4512, subd. (a).) The "fifth category" is described as "disabling conditions found to be

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.” (§ 4512, subd. (a).) “The fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled].” (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.) A qualifying condition also must onset before one’s 18th birthday and continue indefinitely thereafter. (§ 4512.)

5. An individual who is determined by any regional center to be eligible for services shall remain eligible from regional centers throughout the state, unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability was clearly erroneous. (§ 4643.5, subd. (b).)

## **Disposition**

6. A. In this case, the service agency met its burden of establishing its initial determination that claimant had an ID was clearly erroneous. (Factual Findings 6-22.)

B. The service agency initially was hesitant to deem claimant eligible for services under the category of ID because Dr. De Candia’s report had mixed findings. While Dr. De Candia advised Dr. Langenbacher he leaned toward ID as the correct diagnosis for claimant, he still was uncertain over his conclusion, and he recommended the service agency reevaluate claimant in three years.

C. Subsequent events undercut the viability of Dr. De Candia’s findings. For example, claimant was not deemed eligible for special education services based on an ID, and various reports issued by the District described him as a child with low average intellectual abilities, who was challenged mostly by speech and language

delays. In 2018, claimant reported hearing voices urging him to do certain things, which suggests a possible mental health issue.

D. Finally, in 2019, Dr. Carrillo reassessed claimant, and similarly found him to be a young man with low average intelligence, ADHD, and a Language Disorder. Dr. Carrillo believes claimant's Language Disorder is the primary cause of his deficits, not his intellectual functioning. Dr. Carrillo's conclusions rule out claimant having an ID.

E. While there is anecdotal evidence suggesting the possibility of a fifth category condition, the evidence is insufficient to establish claimant has that condition. Thus, based on this record, the service agency established claimant does not have ID or any other developmental disability. As such, he is no longer eligible for regional center services.

7. While the service agency's initial assessment of claimant in 2015 was clearly erroneous, claimant's current situation is far from clear. His case is fluid and complicated, in that he is a teenager who has one mental health diagnosis (ADHD) and a history of hearing voices suggesting the onset of another. He also has a Language Disorder. Though it is unlikely claimant has an ID, over time continuing adaptive delays may point to a fifth category condition. In addition, Dr. Carrillo's 2019 report recommends claimant be reevaluated if his autistic-like behaviors and tendencies increase, intensify, and/or become more frequent. Thus, claimant's mother is encouraged to obtain an independent assessment of claimant, and if the results warrant it, refer her son again to the service agency for an eligibility redetermination. (Factual Findings 1-22.)

## **ORDER**

Claimant's appeal is denied. Claimant is no longer eligible for regional center services.

DATE:

ERIC SAWYER  
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.