

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

In the Matter of:

CLAIMANT

v.

REDWOOD COAST REGIONAL CENTER, Service Agency.

OAH No. 2021040241

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on July 1, 2021. Certified sign language interpreters Holly Newstead and Jennifer Jacobs were present to interpret at the hearing.

Claimant was represented by his mother. Claimant was present for part of the hearing.

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

The matter was submitted for decision on July 1, 2021.

ISSUE

Is claimant ineligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for continued services from RCRC, due to a change in claimant's diagnosis?

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old boy who lives with his mother. He began receiving services in February 2014 from Mendocino County Office of Education Early Start Program (early start program) based on his delays in social/emotional skills and in cognition and communication skills.

2. Claimant was evaluated for special education in 2014, when he had his first annual or triennial individual education plan (IEP) from Mendocino County SELPA (special education local plan area). Through his IEP, claimant has been in general education with supplemental social behavioral support.

3. In November 2014, when claimant was about two and a half years old, Richard Goldwasser, M.D., a psychiatric consultant for RCRC, used the early start program assessment based on the program's February 2014 administration of a standard autism diagnostic observation schedule (ADOS-2) to evaluate claimant. Based on the ADOS-2 results and other assessments, Dr. Goldwasser diagnosed claimant with Autism Spectrum Disorder (ASD), requiring substantial support for social communication and for restricted repetitive behaviors, associated with features of Attention Deficit Hyperactivity Disorder (ADHD).

4. In February 2015, Ubaldo F. Sanchez, Ph.D., evaluated claimant and concluded that claimant was in the average range for cognitive skills and was mildly to moderately impaired for adaptive skills. In May 2015, RCRC determined that claimant was eligible for services under the Lanterman Act based on claimant's diagnosis of autism.

5. Following evaluations and testing of claimant in 2017, RCRC determined on March 30, 2018, that claimant no longer met the eligibility criteria for services under the Lanterman Act. Claimant's services then consisted of 34 hours per quarter of in-home respite. Claimant appealed and a decision of the Office of Administrative Hearings was issued on November 14, 2018. The Administrative Law Judge granted claimant's appeal, finding that claimant would remain eligible for RCRC services unless and until RCRC had conducted a comprehensive reassessment, including input from claimant's teacher.

6. On March 8, 2021, RCRC issued a notice of proposed action stating that claimant would no longer be eligible for services effective March 8, 2021, because claimant does not have a developmental disability. Claimant submitted a fair hearing request, seeking to continue his services with RCRC. This hearing resulted.

7. Claimant's mother acknowledged at hearing that claimant has come a long way, and no longer has behavioral problems except when he is overwhelmed. She agreed at hearing that claimant no longer meets the criteria for a developmental disability. She believed that claimant meets some other criteria for support in classes as she is concerned that claimant is falling behind in school. She requested continuation of respite services because as a single mother, she needs support.

Recent Program and Education Plans

8. Claimant's April 12, 2019, Individual Program Plan (IPP) with RCRC described claimant as an active little boy in first grade who enjoyed many activities, and noted that his tantrums had greatly decreased. Claimant's communication was described as "very good" and he was able to "communicate his wants and needs very well."

9. At the time of claimant's May 13, 2020, IPP, claimant had been living in a foster home since the summer of 2019, with weekly visits with his mother. Claimant was described again as an active little boy whose communication was very good. His mother reported that claimant could focus on a task longer than 30 minutes. His foster parent reported that claimant did not engage in excessive tantrums and did not have any behaviors that were too concerning.

10. On May 28, 2020, a triennial IEP team meeting (via videoconference) was held. Claimant's mother and claimant's special education teacher participated and provided input. Claimant's special education teacher explained assessment results showing that claimant was functioning at or above grade level. The IEP also noted that claimant's daily living skills were developmentally appropriate. The IEP team determined that program accommodations were not needed in general education classes for claimant. The IEP remained in place pending more assessments in social emotional areas.

11. An IEP meeting was held on October 15, 2020, for changes to the IEP. Several participants attended, including claimant's mother, claimant's general education teachers and special education teacher. The purpose of the meeting was to review the free and appropriate public education plan for claimant. Although school

staff members believed claimant no longer to be eligible for special education services and had no concerns about discontinuation of these services, claimant's mother was concerned about supports in case of regression. The IEP team agreed to additional behavioral and social emotional testing for claimant.

RCRC Evidence

DR. WRIGHT

12. In December 2020, RCRC referred claimant to Michael Wright, Ph.D., for an autism spectrum evaluation. Dr. Wright issued a report dated January 1, 2021, and testified at hearing. Dr. Wright is a licensed clinical psychologist, specializing in autism and assessments for children. He reviewed claimant's records, including claimant's school IEP in 2020, administered specialized tests and held separate in-person clinical interviews with claimant and his mother.

13. Specific assessment tests administered by Dr. Wight showed claimant's composite score summary was mostly average, with working memory low average and processing speed high average. Claimant's Full Scale IQ was in the average range. Dr. Wright used a standard ADOS-2 for an assessment of communication, social interaction, and play for individuals thought to have autism. Dr. Wright found that claimant did not demonstrate any unusual sensory behaviors or restrictive behaviors. He found that claimant did demonstrate numerous behaviors associated with ADHD.

14. Claimant's mother told Dr. Wright that even though claimant's school no longer saw the need for claimant to be on an IEP, claimant had difficulty with remote learning because he got distracted easily and did not focus on schoolwork. Considering his records review, tests and clinical interviews, Dr. Wright concluded that there was no evidence of ASD. In addition to his ADHD diagnosis, Dr. Wright found

claimant at risk for developing oppositional defiant disorder, particularly without treatment for his ADHD.

15. At hearing, Dr. Wright explained overlapping behaviors of ASD and ADHD. He also explained the difference in diagnosing a young child, when cognitive function and behaviors are less developed. He referred to the ADOS for claimant in February 2014 that contributed to claimant's eligibility. Dr. Wright's testimony was persuasive and not disputed.

DR. SULLIVAN

16. John Sullivan, M.D., testified at hearing as a medical consultant for RCRC. He began working with RCRC in 1985. He is a member of the American Academy of Pediatrics, and has training in child development and developmental disabilities. He concluded that claimant is no longer eligible for RCRC services based primarily on the evaluation of Dr. Wright, a qualified evaluator who considered medical records, history and information from multiple sources, including teachers and families. Dr. Sullivan also testified at the 2018 hearing. His evaluation since then took into consideration information from the recent school IEP, and collateral information from RCRC staff.

17. Dr. Sullivan opined that claimant had no areas of developmental disability due to autism, but that some symptoms look similar to ADHD at a very young age, when claimant was initially diagnosed with ASD. He also notes that developmental disorders are expected to last permanently, unlike the early symptoms of claimant.

MR. NELSON

18. Dwayne Nelson testified at hearing as a client services manager for RCRC. He has a master's degree in psychology, and has worked with RCRC for eight years. He also explained that autism-like characteristics and symptoms overlapped with ADHD. In the early start program, a psychological assessment is performed at the age of three. Nelson testified that claimant has made progress and is not substantially disabled compared to claimant's same age peers.

19. Nelson suggested other possible respite service resources for claimant. These resources might be through Medi-Cal or other health insurance, or from the County, such as SELPA.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (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. (*Id.*, §§ 4501, 4502, subd. (b)(3); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. A developmental disability is 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." The term "developmental disability" includes autism. (Welf. & Inst. Code, § 4512, subd. (a).) 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 claimant. (*Id.*, § 4512, subd. (l).) The areas applicable to claimant in this matter are: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; and (5) self-direction.

3. The Lanterman 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.) An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous. (Welf. & Inst. Code, § 4643.5, subd. (b).) Before an individual who has been found eligible can be denied that status, the regional center must perform a comprehensive reassessment of the individual receiving services.

4. In this matter, RCRC relied on expert opinions that considered input about claimant's functional limitations from individuals who regularly interact with claimant, in particular his teachers through claimant's IEP's, and his mother. (Findings 7 through 18.) RCRC conducted a comprehensive reassessment of claimant, as required by law, and properly determined that claimant does not currently have a qualifying diagnosis. He is not eligible for continued services from RCRC.

ORDER

Claimant's appeal from the denial of continued eligibility for services is denied.

DATE:

BARBARA O'HEARN

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.