

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021090791

DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 9, 2022.

Daniel Ibarra, Fair Hearings Specialist, represented the San Gabriel/Pomona Regional Center (RC or Regional Center).

Steven Figueroa, Advocate, represented claimant. Claimant and his mother (Mother) were present at the hearing.

Salvador Barrientos, certified court interpreter, provided Spanish to English and English to Spanish interpretation services during the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 9, 2022.

ISSUE

Is Claimant eligible to receive services from RC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 16-year-old male who requested services from RC. In order to determine if claimant is eligible to receive RC services, RC scheduled and performed an evaluation of claimant's condition.

2. On August 25, 2021, Rosa Fernandez, Intake Services Coordinator at RC, sent a Notice of Proposed Action letter to claimant, informing him that RC personnel had concluded claimant is not eligible to receive services.

3. On September 7, 2021, claimant requested a fair hearing to appeal RC's decision that he is not eligible to receive services.

Regional Center's Evaluation of Claimant

4. RC staff and consultants evaluated claimant's potential eligibility based on Autism Spectrum Disorder (ASD) and intellectual disability. Cerebral palsy and epilepsy were not considered because nothing in claimant's condition and medical history suggests claimant has those conditions.

5. On June 29, 2021, at RC's request, Thomas L. Carrillo (Carrillo), clinical psychologist, performed an evaluation of claimant. Carrillo diagnosed claimant as having Attention Deficit Hyperactivity Disorder (ADHD) and ASD. Carrillo found claimant to have an IQ of 105 and to be "average" in the areas of cognition, academic skills, adaptive skills (communication and daily living). Carrillo found claimant "below average" in the area of social interaction.

6. Deborah Langenbacher, RC staff psychologist, testified that RC personnel considered Carrillo's report, all other available school and medical reports regarding claimant, as well as information reported by claimant and his mother.

7. As will be discussed in the Legal Conclusions section, a person with an ASD diagnosis may be eligible for RC services. However, in order to be eligible, a person's ASD must result in a "substantial disability," which exists if the person has "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: Self-Care, Receptive and Expressive language, Learning, Mobility, Self-Direction, Capacity for Independent Living, and Economic Self-Sufficiency, as set forth in Welfare and Institutions Code section 4512, subdivision (l)(1).

8. RC staff concluded that claimant has significant functional limitations in Self-Direction.

9. RC staff concluded that claimant does not have significant functional limitations in the areas of Self-Care, Receptive and Expressive language, Learning, and Mobility.

10. RC did not consider the areas of Capacity for Independent Living and Economic Self-Sufficiency. It was not established why these areas were not considered

by RC. A person's qualifying disability must originate before age 18, and claimant is 16 years old. Therefore, given claimant's age, it is reasonable to consider these areas, which will be discussed in Findings 17 and 18.

Other Findings

11. Besides ASD and ADHD, claimant also suffers from anxiety and depression.

12. Claimant performed adequately in elementary school, but his grades have been lower since he began attending high school. Respondent is currently attending school via virtual classes. Claimant's lower grades have occurred during a time when his absences from school have increased.

13. Claimant and his mother both testified. Claimant is a thoughtful and well-spoken young man who is cognizant of his mental health issues. He wants to overcome these obstacles to achieve success in school. Claimant acknowledges that he tends to isolate himself. On a daily basis, claimant is anxious and tired, and he can become easily distracted.

14. Mother testified that claimant performs self-care tasks, such as brushing his teeth or getting regular sleep, but he needs to be reminded on multiple occasions. Claimant rarely leaves the home without Mother.

15. While claimant needs reminders to perform Self Care acts, he is functionally able to perform these acts. Therefore, claimant does not have significant functional limitations in the area of Self-Care.

16. Claimant does not have significant functional limitations in the areas of Receptive and Expressive language, Learning, or Mobility.

17. It was not established that claimant has significant functional limitations in Economic Self-Sufficiency. Claimant has the capacity to understand money and finances, and it was not established that he will be unable to find employment when he completes his schooling.

18. In the area of Capacity for Independent Living, claimant has limitations in that he rarely leaves the house without his mother. However, while claimant prefers to leave home with his mother, it was not established that he has significant functional limitations in this area.

19. Dr. Veronica I. Olvera (Olvera), a clinical neuropsychologist, performed an Independent Educational Evaluation of claimant on May 15 and June 8, 2021. Olvera concluded that claimant did not meet the criteria for a diagnosis of autism under the special education code. Olvera concluded that claimant does not have an intellectual disability because claimant's IQ is within the low to high average range. Olvera did not find that claimant has a specific learning disability and that claimant's recent poor grades may be the result of absences from school.

20. Olvera diagnosed claimant as having ADHD and Hypoparathyroidism, which can result in negative behaviors such as inattention, distractibility, and memory challenges. It was not established that claimant has received treatment for his hypoparathyroidism.

LEGAL CONCLUSIONS

1. Individuals who disagree with regional center determinations, such as in the instant case, may appeal the determination through a fair hearing process. (Welf. & Inst. Code §§ 4700-4716, and Cal. Code Regs., tit. 17, §§ 50900-50964).

2. Because claimant seeks to establish his eligibility for services, he bears the burden to demonstrate eligibility, and that the RC's decision to deny eligibility is incorrect. (See Evid. Code §§ 115.)

3. The Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) provides services and supports to individuals with developmental disabilities.

4. Welfare and Institutions Code (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." The sole qualifying disabilities are: "intellectual disability, cerebral palsy, epilepsy, and 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 but shall not include other handicapping conditions that are solely physical in nature."

5. Pursuant to Code section 4512, subdivision (l)(1), and California Code of Regulations, title 17 (Regulation), section 54001, the term "substantial disability" means 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: Self-care, Receptive and Expressive Language, Learning, Mobility, Self-direction, Capacity for Independent Living, and Economic Self-Sufficiency.

6. In determining eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative*

Hearings (2001) 89 Cal.App.4th 1119, 1127.) RC determined that while claimant has a diagnosis of ASD, he does not have significant functional limitations in at least three of the seven areas of major life activity.

7. Claimant and his mother present as sympathetic and credible. Claimant has numerous challenges, as well as talents, and his daily life can be difficult. However, claimant did not establish that RC's decision denying him eligibility is incorrect. Further, the law provides that deference is to be given to RC professional's evaluation and determination of claimant's eligibility for services. RC acted reasonably in limiting its assessment to whether claimant had an Intellectual Disability or Autism. Claimant's recent struggles at school may be due to at-home learning (due to COVID-19), absences from school, or hypoparathyroidism. Despite his diagnoses, claimant is capable and bright. Claimant can perform self-care tasks, despite needing multiple reminders to do so. Despite a diagnosis of ASD, claimant does not have significant functional limitations in at least three of the seven major life areas. For this reasoning, claimant does not meet the eligibility criteria of the Lanterman Act. Under these circumstances, RC's decision must be affirmed, consistent with the order below.

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ORDER

Claimant is not eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

Claimant's appeal from RC's determination that he is not eligible for regional center services and supports is denied.

DATE:

CHRIS RUIZ

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.