

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2021120947

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on February 9, 2022.

Julie A. Ocheltree, Enright & Ocheltree, LLP, attorneys at law, appeared on behalf of South Central Los Angeles Regional Center (SCLARC or Service Agency.)

Claimant's mother and authorized representative appeared on behalf of claimant, who was present. Family and party titles are used in the decision to protect claimant's privacy.

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 and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 25.

Testimony: Laurie McKnight Brown, Ph.D.; claimant's mother; claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 21 years old and lives at home with his mother. In February 2021, claimant's mother asked the Service Agency to determine claimant's eligibility for services and supports due to her concerns that claimant may have autism spectrum disorder (ASD) or intellectual disability (ID). The Service Agency had previously determined claimant ineligible for regional center services in January 2020.

2. By a Notice of Proposed Action (NOPA) letter dated December 6, 2021, SCLARC notified claimant that he is not eligible for regional center services under the Lanterman Act because he does not have a "developmental disability" as that term is defined in the Lanterman Act and applicable regulations, citing Welfare and

Institutions Code section 4512, subdivisions (a) and (f) and the California Code of Regulations, title 17, sections 54000 through 54002. The NOPA letter stated that claimant is not substantially disabled as a result of having ID, ASD, seizures, or Cerebral Palsy, or a condition closely related to ID, and that he does not require treatment similar to that required by individuals with ID. SCLARC recommended that claimant continue his mental health services and consider vocational training with the assistance of the Department of Rehabilitation. (Ex. 2.)

3. On December 21, 2021, claimant's mother filed a fair hearing request to appeal the Service Agency's eligibility determination. Claimant's mother filed a corrected fair hearing request on January 28, 2022. This hearing ensued.

Evaluations of Claimant

4. Laurie McKnight Brown, Ph.D., a licensed clinical psychologist and SCLARC consultant, testified. She was a member of the interdisciplinary eligibility team that considered claimant's request for services and supports on November 30, 2021. In addition to her practice as a psychologist, Dr. Brown has a clear multi-subject teaching credential, spent 17 years as a classroom teacher, and has been teaching at the college level for the past seven years.

5. In addition to Dr. Brown, the eligibility team consisted of two psychologists, including Sandra Watson, Psy.D., as well as an education specialist, a nutritionist, a medical specialist, and a program manager.

6. The eligibility team reviewed and considered the following records: (a) a November 2019 Lanterman psycho-social evaluation by Autumn Glass; (b) an August 8, 2021 Lanterman psycho-social evaluation by John Amador, MSW; (c) a December 2019 psychological assessment by Jennie Mathess, Psy.D.; (d) annual Individualized

Education Programs (IEP's) from the claimant's school district from January 2011 to March 2017; (e) an August 2021 and September 2021 psychological assessment by Dr. Watson; (f) medical records from R.O.A.D.S. Community Clinic (ROADS); (g) additional records from ROADS from January 2022; and (h) Consumer ID Notes detailing regional center contacts with claimant's family and its 2020 and current eligibility decisions.

7. In none of the documents the eligibility team reviewed was claimant diagnosed with ASD or ID or any other developmental disability.

NOVEMBER 2019 PSYCHO-SOCIAL EVALUATION

8. In 2019, when he was 19 years old, claimant was living with his adoptive parents, his great aunt and uncle. He sought an eligibility determination from SCLARC, but was denied. Claimant has since been living with his biological mother, who is trying to obtain for claimant the help he needs.

9. In response to claimant's adoptive parents' 2019 request for an eligibility assessment, Autumn Glass, an intake coordinator at SCLARC, conducted a psychosocial assessment of claimant on November 6, 2019. In her report dated January 11, 2020, Ms. Glass recommended that a psychological evaluation be performed, that medical and school records be obtained, that claimant be referred to the Department of Rehabilitation, for Independent Living Skills, to the Family Resource Center for emotional and parenting supports, and that all findings be presented to the interdisciplinary eligibility team to determine whether claimant was eligible for regional center services.

10. Ms. Glass noted that claimant reported having some friends and enjoyed interacting with peers and family. He was receiving speech therapy for a speech and language impairment. He received special education for a special learning disability

until he graduated high school. His school records reported low average cognitive functioning and processing deficits in visual-perception and auditory processing.

**IEP'S AND OTHER RECORDS FROM CLAIMANT'S SCHOOL DISTRICT FROM
JANUARY 2011 TO MARCH 2017**

11. Claimant graduated high school in June 2018. School records show claimant receiving his first IEP when he was four years old. On May 1, 2005, he began receiving special education services as a student meeting the criteria for Specific Learning Disability (SLD), and he received speech and language services for a time.

12. A school psychologist, Takeisha Millender-Johnson, conducted a psychological educational assessment of claimant on January 5, 2016, when claimant was 15 years old and in 10th grade. Ms. Millender-Johnson wrote that claimant experienced no serious medical or psychological concerns in the prior three years that could adversely affect his education. She found that a 2012 assessment showed claimant had "an established cognitive ability within the low to average range, favoring verbal reasoning as strength. . . . Academically, [claimant's] overall achievement was very low He is also receiving services under the speech and language eligibility. There were no significant behavior concerns that required formal interventions." (Ex. 15, p. A124; see also *id.* at p. A132.) She wrote that, currently, claimant's teachers reported he was doing poorly academically because he is distracted by his cellphone during class time; "he is often out of his seat without permission and is easily distracted," and "has trouble staying on task and completing work." (*Id.* at p. A130.)

13. Ms. Millender-Johnson reported that "Current assessment indicates that there appears to be a discrepancy between [claimant's] cognitive ability and academic achievement . . . primarily due to deficits in visual processing This discrepancy can

not be ameliorated within the general education setting; it is not the result of . . . mental retardation Based on the results of this assessment, [claimant] continues to meet eligibility as a student with a Specific Learning Disability" (Ex. 15, p. 132.)

14. In her testimony, Dr. McKnight Brown confirmed Ms. Millender-Johnson's finding that the discrepancy between claimant's lack of a cognitive ability deficit and his academic achievement deficit is one of the criteria of a learning disability.

15. One example of an earlier IEP, dated February 3, 2012, when claimant was 11 years old, shows that claimant's communication development was age-appropriate; he had good vocabulary and spoke in complete sentences. (Ex. 11 at p. A45.) His gross and fine motor skills were age-appropriate. The "Social Emotional/Behavioral" section (equivalent to what the Service Agency refers to as self-direction) notes that claimant is friendly and socializes well with peers and adults. The "Vocational" (or self-care) section notes claimant is very independent and can care for his personal needs. The "Adaptive/Daily Living Skills" section finds claimant age-appropriate. (*Id.* at p. A46.) Other IEP's showed claimant participated in band, had a green belt in karate, and enjoyed participating in sports.

DECEMBER 2019 PSYCHOLOGICAL ASSESSMENT BY DR. MATHESS

16. On December 2, 2019, Jennie M. Mathess, Psy.D., performed a psychological assessment of claimant at SCLARC's request. Claimant was 19 years old. Dr. Mathess wrote that her evaluation would determine claimant's "current level of functioning as part of the application process for Regional Center services. The scope of this evaluation is limited in that it specifically assesses for diagnoses of Intellectual Disability and/or Autism Spectrum Disorder. It is not intended to be a comprehensive psychodiagnostic evaluation of mental or emotional disorders." (Ex. 7, p. A302.)

17. Dr. Mathess reviewed records from claimant's school district; conducted an interview with claimant's adoptive father; and administered the following testing instruments: Autism Diagnostic Interview-Revised (ADI-R), Vineland Adaptive Behavior Scales, 3rd Edition, Domain-Level Parent/Caregiver Form, and Wechsler Adult Intelligence Scale- 4th Edition (WAIS-IV).

18. Using the Diagnostics and Statistics Manual, 5th edition (DSM-5), Dr. Mathess diagnosed claimant with Specific Learning Disorder (by history).

19. Dr. Mathess found that claimant's cognitive functioning was in the borderline range, and that claimant's adoptive father rated his adaptive functioning in the moderately low to adequate range. "The diagnosis of Intellectual Disability requires significant deficits in intellectual functioning with concurrent deficits in adaptive functioning. Onset of such deficits must have occurred during the developmental period. Based upon his level of cognitive and adaptive functioning, a diagnosis of Intellectual Disability is not indicated. Rather, his profile and history is consistent with a Specific Learning Disorder." (Ex. 7, p. A305.)

20. Dr. Mathess also found that, "[i]n regards to Autism Spectrum Disorder, diagnosis requires persistent deficits in social communication and social interaction, as well as the presence of restricted, repetitive patterns of behavior, interests and activities. Based upon his father's report, test data, and the examiner's observations, [claimant] does not meet criteria for Autism Spectrum Disorder." (Ex. 7, p. A305.)

21. Dr. Mathess recommended, among other things, that claimant participate in a vocational training program through the Department of Rehabilitation.

SCLARC'S 2020 DENIAL OF ELIGIBILITY

22. In a NOPA letter dated January 17, 2020, SCLARC notified claimant's adoptive father that its interdisciplinary eligibility team reviewed Ms. Glass's psychosocial assessment and Dr. Mathess's psychological assessment and determined claimant was not eligible for services and supports because he did not have a developmental disability.

AUGUST 2021 PSYCHO-SOCIAL EVALUATION

23. In response to claimant's biological mother's 2021 request for another assessment of claimant's eligibility for regional center services and supports, John Amador, MSW, an intake coordinator at SCLARC, conducted another psychosocial assessment of claimant by Zoom on August 9, 2021. As a result of the assessment, Mr. Amador recommended that a psychological assessment be performed, that medical, mental health, and school records be obtained, and that all findings be presented to the interdisciplinary eligibility team to determine whether claimant is eligible for regional center services.

24. Mr. Amador noted that claimant's mother informed him of her substance abuse during her pregnancy with claimant and that she did not receive prenatal care. Claimant has a history of mental health treatment but had not received such treatment since moving to his mother's home a year earlier. Claimant's mother reported prompting and assisting claimant with daily living activities.

**AUGUST 2021 AND SEPTEMBER 2021 PSYCHOLOGICAL ASSESSMENT BY
SANDRA WATSON, PSY.D.**

25. Sandra Watson, Psy.D., a SCLARC consultant, conducted a remote psychological assessment of claimant on August 20 and September 20, 2021, when claimant was 21 years old. In her evaluation report, Dr. Watson wrote that SCLARC referred claimant for an evaluation "to assess for conditions that might qualify him for regional center services." (Ex. 21, p. A318.)

26. Dr. Watson performed a records review, including Ms. Millender-Johnson's 2016 psychological educational assessment and claimant's IEP's, conducted a clinical interview, observed claimant, and administered the following testing instruments: the Autism Diagnostic Interview-Revised (ADI-R), the Developmental Profile 4 (DP-4), and the Vineland Adaptive Behavior Scales – 3rd Edition (Vineland-3). She attempted to apply the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) but was unsuccessful.

27. Dr. Watson was unable to score any of the testing instruments. She found that claimant had declined slightly in cognitive ability based on school records and prior assessments, but concluded that the results of her current cognitive and adaptive skills testing were not valid and she did not diagnose claimant.

28. Dr. Watson noted claimant's mother's pregnancy included drug and alcohol use, that she did not receive prenatal care, that she reported claimant was born malnourished, and that claimant was removed from her care shortly after birth and placed in the care of his paternal aunt and uncle, who adopted claimant when he was four years old. Claimant's mother was unsure of claimant's early developmental history and whether he reached his milestones appropriately, and little was recorded

about claimant's development when he previously applied for regional center services. Claimant's mother reported that claimant was in good health and had no seizures or hospitalizations. She reported that claimant had friends in high school, though he was also bullied there, but had no friends at the time of the assessment during the COVID-19 pandemic.

29. Dr. Watson observed on her video conference that claimant promptly returned her greeting but then had to be prompted to speak by his mother. When claimant appeared unable to answer questions during the cognitive testing portion of the assessment, despite Mr. Amador's finding that claimant expressed himself well, Dr. Watson decided to see claimant another time. When they convened on that second date, again claimant would not answer Dr. Watson. "It is not believed that this assessment is a good measure of [claimant's] functioning. A direct cognitive measure was not able to be administered." (Ex. 21, p. A322.)

30. As a result of her problems testing claimant, Dr. Watson decided to administer the DP-4 in a separate telephone session with claimant's mother, to obtain a verbal report from her rather than directly measure claimant's functioning. The DP-4 allows the interviewer to obtain standard scores to assess a child's level of development. Dr. Watson found claimant scored in the delayed range in the fields of physical, adaptive behavior, social-emotional, cognitive, and communication.

31. Dr. Watson administered the Vineland-3 to claimant's mother to assess claimant's skills in communication, daily living, and socialization. Dr. Watson could not score the instrument because claimant's mother missed much of claimant's early life and could not reliably provide answers.

32. Claimant's mother said she heard a doctor say at claimant's birth that he had autism, but she did not know whether any testing had ever confirmed that condition. Dr. Watson administered the ADI-R, a "standardized semi-structured clinical interview administered to caregivers with questions which are structured to ascertain crucial information about the individual's developmental period and current functioning." (Ex. 21, p. A324.) Dr. Watson administered only the current behavior algorithm; the diagnostic algorithm, however, was administered to claimant's adoptive parents in 2019. Dr. Watson noted that, though claimant's mother endorsed some areas of behavior consistent with individuals with ASD, in 2019 "all of [claimant's] scores fell well below the cut-off scores for Autism Spectrum Disorder. No other testing was reviewed that offered any other different information. This assessor can only conclude from that test as well as from others' and her own observations that [claimant] does not meet criteria for Autism Spectrum Disorder." (*Id.* at p. A326.)

33. Because of school records showing claimant being distracted and unfocused, Dr. Watson recommended that claimant "seek a mental health evaluation. Individual therapy might help him continue to adjust to the changes in moving from his previous home to his present home after such a long absence from his mother. [¶] It is recommended that . . . [claimant's mother] seek a mental health evaluation for [claimant] to rule out Attention-Deficit/Hyperactivity Disorder. If he does indeed have this disorder, treatment may help him to become better focused." (Ex. 21, p. A326.)

34. Though based in part on incomplete testing, Dr. Watson's conclusions that prior records and testing do not show claimant has ASD or ID is persuasive, based on those prior records, her observations, and the lack of evidence supporting an eligible diagnosis based on ID, AD, or fifth category.

RECORDS FROM ROADS

35. Respondent is receiving psychiatric treatment for post-traumatic stress disorder at ROADS. He has told his therapist there he is depressed and has had suicidal ideation. (Ex. 3, p. A12.)

36. Claimant is also receiving assistance with social skills based on a purported diagnosis of autism. (Ex. 6, p. A299.) But no records introduced at hearing, including ROADS records, provide any information about such a diagnosis, or any psychological assessment or report of any mental health professional making such a diagnosis, or the basis for or the date of such a diagnosis.

Other Evidence

37. Claimant's mother testified that claimant's father was violent and abusive, and when she was pregnant with claimant she escaped the abuse by using alcohol and drugs. She asked her aunt and her aunt's husband to raise claimant while she attended to her substance use issues. They adopted claimant when he was four years old. Claimant's mother entered a program for women and children and got clean and sober.

38. Claimant's mother visited claimant after she attained sobriety and believed his conversation was not age-appropriate. Claimant's adoptive parents did not tell her claimant was having problems communicating or succeeding in school. Claimant graduated from high school in 2018. Claimant's mother believes claimant got through school by copying others' work. She believes it would have benefitted him to attend a special education program, but her aunt did not want him to be treated differently from other students.

39. Claimant came to live with his mother when she learned from her cousin that claimant's great aunt was suffering from dementia. Claimant's mother testified that claimant's conversation was limited to yes and no answers and that he did not use complete sentences. She was determined to get him help, especially after she learned from her cousin that claimant said he wanted to commit suicide.

40. Claimant's mother took him to ROADS for treatment. Providers at ROADS told her that claimant might have ASD or mild ID and suggested she ask SCLARC to provide services. SCLARC had already denied eligibility to claimant in 2020, when claimant's adoptive mother brought him there. But claimant's adoptive mother did not know the history of claimant's birth mother's pregnancy. Claimant's birth mother did not receive any prenatal care and believes claimant was exposed to drugs in utero. She believes SCLARC was not aware of claimant's early exposure to drugs when claimant was first evaluated for eligibility in 2019 and 2020. That is why she contacted SCLARC and asked for a new eligibility assessment. She provided SCLARC with claimant's school and medical records.

41. Claimant's mother testified claimant would benefit from regional center services, including communication skills, life skills, and self-care training. She told claimant that, if he is not found eligible, she will have him attend college. He is concerned he will not be able to keep up with other students.

42. Claimant testified that his great aunt and uncle tried to have him determined eligible for regional center services because he needs the help and has delays. His great aunt tried to help him conceal his delays, and he got passing grades in school because he used to copy from other students' work. He testified he needs support in developing communication skills and independence skills. Claimant's testimony was clear and forthright.

Summary of Evidentiary Findings

43. There is no indication that claimant has ever had or been diagnosed with seizures or cerebral palsy. Nor does the evidence support a finding of eligibility based on a diagnosis of ASD, intellectual disability, or a condition similar to intellectual disability or one that requires treatment similar to that required by an individual with intellectual disability.

44. When examined in the context of all the evidence, the conclusion of the multidisciplinary eligibility team that claimant does not meet the DSM-5 criteria for any developmental disability, including ASD and ID, is persuasive. That conclusion was based on the opinions and recommendations of various mental health providers after psychological evaluations that included clinical interviews, records reviews, application of appropriate assessments, and exploration of the appropriate diagnostic criteria. Nor is claimant eligible under the fifth category of eligibility. During his developmental years, claimant received IEPs that show his level of functioning and attribute any difficulties to a learning disability, which is not an eligible condition for regional center services.

LEGAL CONCLUSIONS

1. Cause does not exist to grant claimant's request for regional center services, as set forth in Factual Findings 1 through 44 and Legal Conclusions 2 through 5.

2. The party asserting a claim 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.) In this case, claimant bears the burden of proving, by

a preponderance of the evidence, that he is eligible for benefits or services. (See Evid. Code, § 115.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that “originate[d] before [he] attain[ed] 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for [him].” (Welf. & Inst. Code, § 4512, subd. (a); see also Cal. Code Regs., tit. 17, §§ 54000, 54010.)

4. There are five categories of developmental disability that may be used to establish eligibility for regional center services. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, §§ 54000.) The categories are cerebral palsy, epilepsy, autism, intellectual disability, and “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but [that do] not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a).) Developmental disabilities do not include solely learning disabilities or solely psychiatric disorders. Learning disabilities are those that manifest as a significant discrepancy between estimated cognitive potential and actual level of educational performance and are not a result of ID or psychiatric disorders. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1)-(3).)

5. Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act based on a diagnosis of any category of eligibility. (Factual Findings 1-44.) It is not disputed that claimant may benefit from treatment for his learning disorder and mental health issues. But a learning disorder, according to the DSM-5, “differs from general learning difficulties associated with intellectual disability, because the learning difficulties occur in the

presence of normal levels of intellectual functioning (i.e., IQ score of at least 70, plus or minus 5)." (Ex. 24, p. A357.) The functional consequences of a learning disorder can last across a person's lifetime and may include low academic attainment, low rates of post-secondary education, high levels of psychological distress, poor overall mental health, and depressive symptoms and suicidality. (*Ibid.*) The possibility that, aside from treatment for his learning disorder and mental health issues, some regional center services might benefit claimant does not make him eligible for those services. (See *Ronald F. v. Department of Developmental Services* (2017) 8 Cal.App.5th 84, 97-99.)

ORDER

Claimant's appeal is denied. South Central Los Angeles Regional Center's decision denying claimant's request for regional center services is affirmed.

DATE:

HOWARD W. COHEN

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.