

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022050262

DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 7, 2022.

Candace J. Hein, Fair Hearing Specialist, represented the Westside Regional Center (RC or Regional Center).

A.G. (Mother) represented claimant. Claimant was not present at the hearing. Mother's initials are used to protect the family's confidentiality.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 7, 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 12-year-old male who requested services from RC. To determine if claimant is eligible to receive RC services, RC evaluated claimant's condition.

2. On April 8, 2022, Barbara Linares, Intake Consultant 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 April 22, 2022, 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. In January 2022, claimant's mother contacted RC to request an eligibility assessment of claimant. Claimant lives with his mother, who is divorced from claimant's father.

5. 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.

6. On March 9, 2022, and March 16, 2022, at RC's request, Susan Park (Park), clinical psychologist, performed an evaluation of claimant. Park diagnosed claimant as having Attention-Deficit/Hyperactivity Disorder (ADHD) and ASD. Park found claimant's overall cognitive functioning to be advanced compared to others his age.

7. Park also concluded that claimant has an extensive psychiatric history in which he has experienced significant stress and problems regulating his emotions. Park noted that claimant has challenges in developing age expected general care skills, which included brushing his teeth, washing his hair, and completing chores. Park found that claimant has problems with interpersonal skills and coping skills.

8. In reviewing claimant's medical history, Park stated that claimant has previously been diagnosed as having Posttraumatic Stress Disorder (PTSD), General Anxiety Disorder, Major Depressive Disorder, and ADHD.

9. Kaely Shilakes (Shilakes) is an Intake Manager for RC. She is also a licensed psychologist. Shilakes was part of a multidisciplinary team that evaluated claimant's eligibility. The team included a service coordinator, a physician, an autism specialist, a psychology consultant, and Shilakes. The team unanimously concluded that claimant is appropriately diagnosed with ASD, but that many of his issues are best explained by claimant's mental health conditions, which are detailed in the psychiatric history in claimant's medical record.

10. At the time the multidisciplinary team was making its decision, claimant was attending the sixth grade at his school. Claimant's mother reported that claimant

was doing well in school, usually obtaining grades of A's and B's. Mother also informed RC that claimant can dress himself and maintain good hygiene with prompting and reminders.

11. Claimant attended his school's gifted program until third grade, when he was removed from his mother's care for eight months by the Department of Children and Family Services (DCFS), based on allegations made by claimant's father. Claimant lived with his aunt for eight months, and then returned to living with his mother.

12. While attending the fifth grade, claimant's school assessed his needs to determine if claimant required an Individualized Education Plan (IEP). Claimant was found ineligible.

13. In December 2021, claimant was seen at LA Psychological Assessment by Taylor Sorenson, a licensed psychologist. She diagnosed claimant as having PTSD, Major Depressive Disorder, Generalized Anxiety Disorder, and ADHD.

14. 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).

15. Shilakes testified that RC believes claimant has significant functional limitations in the area of Self-Direction, but not in any of the other areas. RC staff

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

16. RC did not consider the areas of Capacity for Independent Living and Economic Self-Sufficiency because of claimant's age, which was appropriate.

Other Findings

17. Miguel H. Trejo (Trejo) testified on claimant's behalf. Trejo has a doctorate in Human Development, and he is working with claimant as a behaviorist, utilizing Applied Behavior Analysis (ABA) therapy. Trejo began working with claimant three weeks ago. Trejo testified that claimant can perform well when being tested, but on a day-to-day basis claimant may have difficulty completing those same tasks. Trejo believes claimant needs an IEP at his school and a 1:1 aide to assist claimant with his schooling.

18. Claimant's mother testified that claimant performs well when being tested, despite having problems performing the same tasks on a day-to-day basis. Mother reported that claimant stopped attending school in February 2022 because he lost interest in school. The record is unclear as to whether this information was conveyed to RC.

19. Mother is also a psychologist. She testified it is difficult to determine whether claimant's desire to sleep much of the time is caused by his diagnoses of Major Depressive Disorder or Generalized Anxiety Disorder, or if it is caused by claimant's ASD diagnosis.

20. Mother testified that claimant was recently been found to be eligible for an Individualized Education Plan by his school. Mother believes "emotional

disturbances” is the area under which the school found claimant eligible for services. No documents were submitted relating to this eligibility.

21. In the area of Self-Care, Mother testified that claimant cannot maintain good hygiene, does not like water in his hair, refuses to have his hair cut, will not cut his nails, eats with his hands, and is unable to cook a simple meal. She indicated claimant must be prompted and directed to accomplish these tasks.

22. In the area of Mobility, Mother testified that claimant walks on his tip-toes, shows poor motor coordination, and refuses to play sports. Mother stated she recently noticed that claimant had increased the times he walks on his toes.

23. While Mother’s concerns in these areas are certainly justified, claimant did not establish that he has significant functional limitations in the areas of Self-Care, Receptive and Expressive Language, Learning, or Mobility.

24. In the area of Self-Care, claimant can perform many of the Self-Care tasks, but he requires prompting and reminding. This behavior does not rise to the level of a significant functional limitation. Also, at the time claimant was evaluated by RC, claimant was not exhibiting some of behavior that Mother described related to Self-Care.

25. In the area of Mobility, it was reported to RC that claimant can walk and run. Since claimant can walk and run, it cannot be said that he has a significant functional limitation in the area of Mobility.

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's mother presented as a capable and caring person. 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 will hopefully improve now that the school has found him eligible for an IEP plan.

8. 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.

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.