

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022050783

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 25, 2022.

Claimant appeared and represented himself during the proceedings. (Claimant and his family members are identified by titles to protect their privacy.)

Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Jorge Morales, Appeals Specialist.

Testimony and documents were received into evidence. The record closed and the matter was submitted for decision on October 25, 2022.

ISSUE

Whether Service Agency should conduct another assessment of Claimant to determine if he is eligible for regional center services.

EVIDENCE

Documentary: Exhibits 1 through 17 and A through Z.

Testimonial: Randi Bienstock, Clinical Psychologist, and Claimant.

FACTUAL FINDINGS

Background

1. Claimant is 35-year-old male who self-referred to the Service Agency for an assessment of regional center eligibility on the basis of Autism Spectrum Disorder (ASD).

2. On May 5, 2022, the Service Agency sent a letter, notifying Claimant of its determination that Claimant is not eligible for regional center services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act).

3. Claimant submitted a Fair Hearing Request requesting further evaluations be conducted taking into consideration his "unique circumstances and life struggles" to accurately assess whether he has autism. (Exh. 2, p. A2.)

Claimant's Background

4. Claimant resides with his paternal grandmother (Grandmother) in the Service Agency's catchment area. Claimant has resided with Grandmother since he was a "baby" when his mother brought him to Grandmother claiming she "could not handle [Claimant]." (Exh, 3, p. A3.)

5. When Claimant was seven years old, he suffered a head injury when a bicycle fell on his head. Claimant reported the incident "left a dent" in his skull. (Exh, 3, p. A7.) It was unclear whether Claimant had any lingering effects from the incident.

6. As a child, Claimant was found eligible for special education services by the Los Angeles Unified School District based on a learning disability. Specifically, Claimant had "a severe discrepancy between his intellectual ability [and] academic achievement in the area of written language due to auditory processing memory attention deficits." (Exh. 16, p. A141.)

7. During the sixth grade, Claimant moved to Walter Dexter Middle School (Dexter) in the Whittier City School District (WCSD). It is unclear how long Claimant attended Dexter before he began being home schooled. While being home schooled, Claimant attended either Sierra Vista Elementary School or Sierra Vista High School during part of the school day. Claimant received his high school diploma in 2008 from either Sierra Vista High School or Whittier High School. After graduating from high school, Claimant attended Rio Hondo College (Rio Hondo) and was awarded a degree on August 28, 2009. The unofficial transcript from Rio Hondo, which was admitted as Exhibit 17, somewhat confusingly indicates Claimant had been awarded an Associate of Arts degree but states he was enrolled in the Associate of Science in Biology program.

8. Claimant has only had one job, working as a mover for his father's company for approximately five years. Claimant stopped working for his father after he was involved in a serious multi-car accident when he was 22 years old. As a result of the accident, Claimant was hospitalized in a trauma center and experienced loss of his equilibrium, resulting in Claimant having to use a cane when walking to maintain balance and memory loss. Claimant attempted working at a factory but quit after a day because he could not socially fit in, as his co-workers tried to take the beanie hat Claimant wears to hide his alopecia areata, an autoimmune disorder that causes hair loss.

ELARC Psychosocial Assessment

9. On January 11, 2022, ELARC Assessment Coordinator (AC) Suk-Han Yew conducted a psychosocial assessment interview of Claimant by telephone. AC Yew prepared a report of the interview and her recommendations, which was admitted as Exhibit 3 (Psychosocial Assessment).

10. During the interview, Claimant described himself as being "high functioning on the spectrum" and reported to AC Yew that he considered himself to have Asperger's Disorder, though he has never been evaluated. Under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), the mental-health industry standard diagnostic reference used by regional centers in evaluating an applicant's eligibility for services, autism, and related disorders, such as Asperger's disorder, are now designated ASD. This decision will use the term ASD, rather than autism or Asperger's.

11. The characteristics Claimant believed to be signs of ASD included: (1) his limited social circle; (2) his tendency to become obsessed over different activities; (3)

his compulsive organization of his belongings; (4) his preference of routine in his life; (5) his habit of playing with his fingers, covering his ears, and shaking; and (6) his tendency to become fixated on objects like trees and insects. Claimant therefore requested diagnostic testing to confirm or rule out ASD.

12. According to Claimant, when he was younger, he had been in a special education program, but his mother took him out of the program. Claimant did not know why he was in the special education program or why his mother removed him from the program.

13. As to his current level of functioning, Claimant reported that he performs all personal hygiene tasks without reminders; helps with household chores; manages his own finances; makes his own appointments; and drives himself to wherever he needs to go.

14. Grandmother joined the call toward the end of the psychosocial interview. Grandmother did not recall Claimant having any speech impediments, exhibiting echolalia or any other unusual speech patterns, exhibiting any repetitive body movements, or having any sensory issues. Grandmother recalled Claimant being an affectionate child, though he did not have any friends. Grandmother attributed this to the fact Claimant had become a target of ridicule due to an illness that left him with little hair. Grandmother also did not recall Claimant being placed in a special education program, and stated that "he was never retained," and got good grades. (Exh, 3, p. A6.)

15. At hearing, Claimant noted that Grandmother had memory issues and was not able to recall many events. The evidence also indicated that Grandmother was not a reliable historian. Though Grandmother denied Claimant had been placed in a

special education program, Grandmother had attended an individualized education program (IEP) meeting at Dexter as Claimant's guardian on March 15, 1999, when Claimant was in the sixth grade. In addition, though Grandmother asserted Claimant got good grades, the Psychological Assessment by ELARC, which is described more in detail in Factual Findings 18 through 38, notes Claimant received an "F" in chemistry when he was in the 10th grade. (Exh. 4, p. A11.)

16. AC Yew observed that Claimant was able to maintain conversation and recall experiences from the past but became extremely agitated after getting a phone call. AC Yew had to distract and prompt Claimant in order to get him to focus on the interview again.

17. Based on the information provided at the psychosocial interview, AC Yew's recommendations were to: (1) obtain medical records; (2) obtain a psychological evaluation; and (3) present Claimant's case to the interdisciplinary team (ID) team to determine eligibility.

Psychological Assessment

18. Service Agency referred Claimant to Heike Ballmaier, Psy.D., BCBA-D, for a psychological assessment to evaluate Claimant's current levels of levels of cognitive and adaptive functioning and rule out ASD. Dr. Ballmaier conducted the evaluation on March 22, 2022, and prepared a report of her findings and conclusions, which was admitted as Exhibit 4 (Psychological Assessment).

19. The Psychological Assessment included: (1) a clinical interview of Claimant, (2) a review of the Psychosocial Assessment, unspecified school records from the 9th through 11th grade, and mental health records from Pacific Clinics from 2017 through 2018, and (3) administration of the Wechsler Abbreviated Scale of

Intelligence, Second Edition (WASI-2); Adaptive Behavior Assessment System, Third Edition (ABAS-3) Adult Form (Self); Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 4 (select scenarios, not scored); and Autism Spectrum Rating Scales (ASRS).

20. Dr. Ballmaier also indicated that phone contact with Claimant's therapist was attempted but not returned. It was unclear which therapist Dr. Ballmaier was referring to as Claimant appears to have treated with several different individuals over the years. The records reviewed by Dr. Ballmaier reference a social worker, medical staff and mental health worker.

CLINICAL INTERVIEW/OBSERVATIONS

21. During the assessment, Dr. Ballmaier noted that though Claimant smiled upon being greeted and exhibited good eye contact, he seemed somewhat agitated throughout the assessment.

22. Claimant reported having a significant psychiatric episode when he was 27 years old and got into a fight with his mother, who attempted to get him hospitalized. In the past eight years, he has been receiving therapy, first from Pacific Clinics and more recently from Rio Hondo Mental Health.

23. During the clinical interview, Claimant reported having several personalities, a friendly one, an irritable one, and one that struggles with gender identity issues. Claimant also reported he was unable to read sarcasm and had to read books about how to interpret other people's body language and social cues.

24. Dr. Ballmaier observed Claimant had clear speech, was very talkative, displayed an affect that was largely congruent with the content of the conversation,

and did not display any restricted repetitive behaviors. Dr. Ballmaier noted, however, that Claimant struggled with social communication and tended to engage in monologues, had difficulty allowing Dr. Ballmaier to interject, make comments, or ask questions unless he was prompted to take conversational turns, and he would frequently get lost in tangential thoughts.

TESTING: WASI-2

25. To assess Claimant's cognitive functioning, Dr. Ballmaier administered the Similarities subtest of the WASI-2, which tests abstract verbal reasoning skills. Claimant obtained a score in the average range. In terms of Functional Academic skills, Claimant obtained a score in the high average range based on self-report.

TESTING: ABAS-3

26. Dr. Ballmaier utilized the ABAS-3 to assess Claimant's adaptive functioning skills. The ABAS-3 assesses 11 skill areas within three major adaptive domains (conceptual, social and practical) and is useful for assessing skills of daily living in individuals with developmental delays, ASD, ID and other impairments.

27. Claimant's composite score in the social domain was in the low average range (SS=81), while his composite scores in the conceptual (SS=100) and practical (SS=93) domains were in the general range. The scores yielded a General Adaptive Composite (GAC) score of 92, which is within the average range.

TESTING: ADOS-2

28. In order to assess Claimant for ASD, Dr. Ballmaier administered Module 4 of the ADOS-2. The ADOS-2 is a semi-structured instrument that presents a series of tasks that involve social interaction for the examiner to observe and categorize. The

observations are combined to produce quantitative scores for analysis, which are then used to diagnose individuals with ASD. Module 4 of the ADOS-2 is geared towards adolescents and adults with fluent language ability. The ADOS-2 was not scored.

TESTING-ASRS

29. Dr. Ballmaier also administered the ASRS. The ASRS is a nationally standardized, norm-referenced ASD rating scale used to identify features of ASD in children and adolescents. As Claimant was well outside the normal age group, the ASRS was only used as a qualitative measure and not scored.

30. Claimant reported that in terms of social communication and social interaction tendencies, he sometimes sought the company of other children but preferred to be alone. Claimant reported: "He never showed little emotion, frequently followed instructions that he understood, never argued with others, was able to engage in group games, and frequently shared fun activities with others." (Exh. 4, p. A19.)

31. Claimant had difficulty in maintaining appropriate eye contact, talking to peers, had memory problems, and sometimes used an odd way of speaking. Claimant "sometimes" understood others' perspectives and noticed social cues. Claimant reported that he had to learn to engage in reciprocal smiling and knew that he talks too much about things that others do not care about, and yet frequently cares about what other people think or feel.

32. Claimant described himself as being very routine oriented. Claimant places all planned activities in a calendar, and likes to see things happen just as expected. He sometimes lines things up, such as water bottles or needs to have his phone at a particular angle. Claimant is very detail-oriented and has many fixations.

33. In terms of restricted repetitive behaviors, Claimant used to pace when stressed, repeatedly touched his fingertips together, and sometimes used to rock and cover his ears. In terms of sensory issues, Claimant may have a panic attack in response to loud noises and will overreact to common smells. Claimant likes carrying a backpack at all times and plays with fidget toys. Claimant reported that his beanie hats must be tight on his head and likes putting inedible things, like parts of a pencil, in his mouth. Claimant reported that because of this, he once put a metal toy in his mouth and chipped a tooth.

FAMILY REPORT

34. Claimant's sister wrote Dr. Ballmaier, of the social difficulties Claimant had exhibited since he was a young child,

When we were kids I remember my brother very anti social, didn't like to talk much to everyone always kept to himself. He didn't have much friends. He would have these episodes where if the subject was different he would break out into like a nervous break down. He didn't know how to compose himself. All he wanted to do was play video games and isolate himself from others. He has socially awkward when it came to hanging out. He always wanted to stay home in his room locked up I believe my brother went through something traumatic event in his life and it changed him. I believe He [*sic*] needs assistance"

(Exh. 4, p. p. A15.)

CONCLUSIONS AND RECOMMENDATION

35. Based on Claimant's test results, Dr. Ballmaier determined Claimant did not present with Intellectual Disability.

36. Dr. Ballmaier also determined that, though Claimant reported a number of autistic-like characteristics, those characteristics could be explained by Claimant's various mental health disorders, physical injuries and unstable family relationships. Dr. Ballmaier noted that if more extensive medical and educational records (prior to age 18) could be located and made available, a follow-up in-person evaluation may be appropriate to further assess for ASD but, at this time, there was insufficient evidence to endorse a diagnosis of ASD.

Medical and School Records

37. Service Agency obtained medical records from Pacific Clinics consisting of an adult reassessment dated June 26, 2017, and what appear to be therapy notes from 2018, and medical records from the Rio Hondo Mental Health Center from November 30, 2018, until January 20, 2022. The Rio Hondo Mental Health Center records clearly indicate that a full assessment had been performed on March 17, 2015. Service Agency, however, did not request the document, and that record was not obtained or reviewed.

38. Claimant was able to locate an IEP dated March 11, 1999, when cleaning Grandmother's room, and provided the Service Agency with a copy. Claimant was not able to obtain any other educational records before he was 18 years old. Claimant appears to have requested his school records and contacted the Service Agency for assistance in obtaining them. The evidence did not indicate what, if any, efforts the Service Agency made in obtaining those documents.

Randi Bienstock, Psy.D.

39. Randi Bienstock, Psy.D, a clinical psychologist. testified at the administrative hearing.

40. Though Dr. Bienstock did not evaluate Claimant, she reviewed Dr. Ballmaier's report, as well as Claimant's Psychosocial Assessment and Claimant's mental health records from Pacific Clinics and Rio Hondo Mental Health Center. Dr. Bienstock prepared a Psychologist Consultant Record Review (Review). In the Review, Dr. Bienstock noted that Dr. Ballmaier reviewed "numerous health records dating back to 2015." (Exh. 5, p. A23.) Though the Psychological Assessment documents that Dr. Ballmaier reviewed medical records from Pacific Clinics consisting of an adult reassessment dated June 26, 2017, and Claimant's 2018 therapy records, there is no indication Dr. Ballmaier reviewed any health records from 2015. Dr. Bienstock determined Claimant was not eligible for services based on Dr. Ballmaier's findings that a diagnosis of ID or ASD was not warranted.

41. At hearing, Dr. Bienstock found it significant that the records from Pacific Clinics and Rio Hondo Mental Health Center did not diagnose Claimant with ASD or document observations by the various mental health professionals of Claimant exhibiting behaviors consistent with ASD. The records are cursory notes and largely document Claimant's statements to the various mental health professionals who had treated him and their suggested coping mechanisms. There was no evidence that such observations would have been documented in the records, as the mental health professionals who created the records were not called to testify about the documentation process.

Claimant's Evidence

42. Claimant's testimony at hearing was consistent with the information he provided both AC Yew and Dr. Ballmaier.

43. Claimant presented various articles about ASD and highlighted the many characteristics he claimed to have which are indicative of ASD. Claimant also opined that his other medical conditions may have masked his ASD and prevented him from being properly diagnosed. Claimant believes a detailed assessment is necessary to evaluate whether he, in fact, has ASD.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst., § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

Service Agency's Eligibility Assessment

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as "a disability that originates before an individual attains 18 years of age; continues, or can

be expected to continue, indefinitely; and constitutes a substantial disability for that individual [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include 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.”

3. Regional centers are charged with carrying out the state’s responsibilities to the developmentally disabled. (Welf. & Inst. Code, § 4620, subd. (a).) It is the Legislature’s apparent intent that regional centers diligently attempt to identify and provide services to all persons with developmental disabilities. The Service Agency is required to “conduct case finding activities, including . . . outreach services . . . and identification of persons who may need service.” (Welf. & Inst. Code, § 4641.)

4. Welfare and Institutions Code sections 4642 and 4643 set forth the procedure for determining if a person is eligible for regional center services. Section 4642, subdivision (a), provides, in pertinent part: “Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional centers [¶] Initial intake shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional center and by other agencies in the community . . . that may be useful to persons with developmental disabilities or their families. Intake shall also include a decision to provide assessment.” (See also Cal. Code Regs., tit. 17, § 54010, subd. (a).)

5. Neither the Lanterman Act nor the implementing regulations require that a comprehensive assessment be provided to all individuals seeking services. However, when it is decided to provide an assessment, Welfare and Institutions Code section 4643 provides the framework for conducting an assessment, if needed. Specifically, an

"[a]ssessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information"

6. In performing the assessment, an interdisciplinary team of professionals "shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained." (Code Regs., tit. 17, § 54001, subd. (c).)

Discussion

7. No evaluation of Claimant has ever concluded that he has ID or anything resembling ID or required treatment similar to the treatment required for ID. There was also no contention that Claimant has cerebral palsy or epilepsy.

8. The DSM-5, at section 299.00, sets forth five diagnostic criteria to aid in diagnosing someone with ASD. (Official notice is taken of the DSM-5 pursuant to Government Code sections 11415.10, subdivision (b), 11425.50, subdivision (c), and 11515, and Evidence Code section 452, subdivision (h).) The evidence indicated that Claimant's issues implicated these criteria, though the evidence did not show it was more likely than not that Claimant met all of them.

9. Each of the criteria is discussed in turn.

10. The first diagnostic criterion for ASD is "[p]ersistent deficits in social communication and social interaction across multiple contexts[.]"

A. Claimant has difficulties in social communication, which was observed by both AC Yew and Dr. Ballmaier during their respective interviews of Claimant. Both noted Claimant becoming easily distracted during the interviews. Dr. Ballmaier further noted Claimant's tendency to monologue, which made it difficult for her to engage Claimant in reciprocal conversation.

B. Accordingly, the evidence showed that Claimant had symptoms that could fall under this diagnostic criterion.

11. The second diagnostic criterion for ASD is "[r]estricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: . . . (1) Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases). . . (4) Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment[.]"

A. There is some evidence showing that Claimant had symptoms that could fall under this diagnostic criterion, though these behaviors were not observed during the assessments or did not occur at hearing. Claimant reported having an "OCD" tendency in organizing his belongings, sensitivity to sounds and smells, and a tendency to fixate on certain objects.

12. The third diagnostic criterion for ASD is that "[s]ymptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by strategies learned in later life)."

A. Claimant's sister submitted a statement to Dr. Ballmaier which noted Claimant had exhibited anti-social behaviors since he was a child.

13. The fourth diagnostic criterion for ASD is that “[s]ymptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.”

A. There is some indication in the records Claimant has been unable to function at school and at home due to his psychological issues. There is some ambiguity as to whether his impairment at school was associated with his ASD-like symptoms, or symptoms more closely associated with other disorders.

14. The fifth diagnostic criterion for ASD is that “[t]hese disturbances are not better explained by intellectual disability . . . or global developmental delay.”

A. As noted previously, there is no contention Claimant has ID or any other global developmental delay. This, however, does not conclusively establish that the behaviors being reported are not due to Claimant’s other medical diagnoses.

15. Claimant was provided with assessment services after the Service Agency determined Claimant may have a developmental disability. (Factual Finding 17 and Legal Conclusion 6.) Having determined that an assessment was necessary, Service Agency was required to provide an assessment that was complete, accurate and complied with the Lanterman Act and implementing regulations.

16. In this case, Dr. Ballmaier noted that Claimant had reported several behaviors consistent with ASD and that if medical and educational records (prior to age 18) could be located and made available, a follow-up in-person evaluation may be appropriate to further assess Claimant for ASD.

17. There was no indication, however, that Service Agency made any effort to obtain Claimant’s educational records from LAUSD (the school district that originally

found Claimant eligible for special education services), Dexter, Sierra Vista or Whittier High Schools, or Claimant's medical records before he was 18 years old. Welfare and Institutions Code section 4643 notes that Service Agency's responsibility in conducting a complete assessment includes the collection and review of available historical diagnostic data.

18. Based on the foregoing, Service Agency will be ordered to conduct a reassessment of Claimant which complies with the Lanterman Act and regulations, by collecting any available educational and medical records to determine Claimant's eligibility for services. This decision makes no findings as to the ultimate question of regional center eligibility.

ORDER

Claimant's appeal is granted. Eastern Los Angeles Regional is ordered to assist Claimant in obtaining his educational records from LAUSD and his other school districts and his medical records before he 18 years old, and conduct a reassessment that complies with the Lanterman Act and regulations to determine Claimant's eligibility for services.

DATE:

NANA CHIN

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.