

**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. 2022060913

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 14, 2022.

Tami Summerville, Fair Hearings Manager, represented South Central Los Angeles Regional Center (RC or Regional Center).

Claimant's mother (Mother) represented Claimant.

Valentina Jimenez, Interpreters Unlimited, provided Spanish to English and English to Spanish interpreting services.

Testimony and documents were received as evidence. The record was closed and the matter was submitted for decision on October 14, 2022.

After the record was closed, the ALJ redacted portions of Exhibit B (Claimant's Social Security records).

ISSUE

Is Claimant eligible to receive services from RC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the qualifying diagnosis of autism spectrum disorder (ASD) or intellectual disability?

EVIDENCE RELIED ON

The following evidence was considered and relied upon by the ALJ in reaching this Decision: Testimony of Dr. Laurie Brown, Claimant's Mother, and Claimant's Grandmother; Exhibits 1-9 and Exhibits A-D.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 6-year-old male who requested services from RC. Claimant attends a kindergarten special education program at his school. Claimant's most recent Individualized Education Plan meeting was held on November 20, 2021.

2. Claimant receives Applied Behavioral Analysis (ABA) services in his home, three times per week, which is funded by his school. Claimant receives Speech Therapy, once per week, at his school.

3. On April 6, 2022, RC sent a letter and a Notice of Proposed Action (NOPA) to Claimant notifying him he was found ineligible for RC services. RC concluded that Claimant does not have a diagnosis of ASD or intellectual disability.

4. On June 20, 2022, Claimant submitted a Fair Hearing Request (FHR), which appealed RC's decision to deny eligibility.

RC's History and Prior Evaluation of Claimant

5. Claimant received Early Intervention services from RC prior to age three.

6. The RC has assessed Claimant for eligibility on two occasions.

7. RC's first assessment of Claimant occurred on February 12, 2019. Claimant's age was two years and 10 months. Claimant was assessed for eligibility to receive RC services and supports by Dr. Victor Sanchez (Sanchez), clinical psychologist. Sanchez diagnosed Claimant as having a speech and language disorder. Sanchez concluded Claimant did not have a diagnosis of ASD.

8. RC's second assessment of Claimant occurred on February 1 and 15, 2022, and was performed by Roberto De Candia (De Candia), Ph. D., licensed clinical psychologist. Candia conducted his assessment via ZOOM video due to the COVID-19 pandemic.

9. Candia diagnosed Claimant as having a language disorder and Attention Deficit Hyperactivity Disorder. However, De Candia's assessment did not rule out intellectual disability and De Candia's assessment was limited by the use of video.

10. De Candia's report (exhibit 5) stated:

[T]he presence of intellectual disability is not suspected but has not been ruled out due to (Claimant's) lack of cooperation with this virtual evaluation. (Claimant) does seem to show a range of behavioral characteristics which are similar to those of children who have been diagnosed with autism. Yet, the absence of repetitive behaviors currently or by history serves to rule out that diagnosis at this time.

11. De Candia recommended that Claimant be reevaluated by RC in one year (in February 2023) if face-to-face evaluations are permissible.

Claimant's Current Request for Evaluation for Eligibility

12. Claimant's mother presented as genuinely caring and trying to do what she believes is best for her son. Mother is understandably concerned and frustrated regarding the different eligibility requirements for social security, special education services, and RC services. Claimant was previously found eligible for social security benefits and special education services. Further, the school district describes Claimant as having autism, which results in Mother questioning how the RC can find Claimant not eligible for services.

13. Claimant's school district found Claimant meets the eligibility criteria for autism. To qualify for special education services under the category of autism, a child's verbal and nonverbal communication skills, and his/her social interaction skills, must be significantly affected, which adversely impacts the student's educational performance.

14. Claimant provided records from Social Security, Elindo Family Centers, California Psychcare, 360 Behavior Health, and Claimant's school.

15. Claimant did not provide evidence to support a diagnosis of intellectual disability or ASD, such as testimony or a report from a medical doctor or a psychologist.

LEGAL CONCLUSIONS

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

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

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

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.” (Id.)

5. 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.) In this case, RC has assessed Claimant for eligibility on two occasions, in February 2019 and December 2021. In both instances, the evaluating doctors did not diagnose Claimant as having an intellectual disability or ASD.

6. Claimant’s Mother presented as sympathetic and credible. Mother is understandably concerned about obtaining whatever assistance is available to help Claimant and his family. Claimant is receiving Social Security benefits and special education services. The special education services were provided after Claimant’s school district concluded Claimant was autistic. Therefore, Mother understandably feels RC should also find Claimant eligible for services based on a diagnosis of ASD.

7. However, the rules for eligibility for RC services and supports are different than those for eligibility for special education services or Social Security benefits. For example, Claimant’s school district examined how Claimant’s deficits impact his education. On the other hand, regional centers generally evaluate how a person’s deficits impact his/her life as a whole. Further, a school may provide special

education to a student with autistic-like behaviors, but some behaviors are not enough to satisfy the more rigorous standard applicable under the Lanterman Act.

8. Claimant did not establish RC's decision finding him ineligible for Lanterman Act services and supports is incorrect. For Claimant to be eligible for RC services and supports, he must have, in part, one of the qualifying disabilities, which for Claimant is either intellectual disability or ASD.

8. Claimant did not establish he has a diagnosis of intellectual disability or ASD. Therefore, RC's determinization must be upheld at this time. However, Dr. De Candia's evaluation of Claimant was limited because it was conducted using video, as compared to an in-person evaluation. Further, Dr. De Candia recommended RC reassess Claimant once in-person evaluations are allowed. Therefore, for all the above reasons, RC's decision is affirmed, consistent with the order below.

ORDER

1. Claimant is not eligible for regional center services and supports at this time, pursuant to the Lanterman Developmental Disabilities Services Act.

2. Claimant's appeal of RC's denial of eligibility is denied.

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3. On February 1, 2023, or any time thereafter, Claimant may request RC perform an in-person assessment (if then allowed under local, state, and federal law) for eligibility in the areas of intellectual disability and ASD.

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.