

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022080534

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on January 26, 2023.

Cristina Aguirre, Due Process Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency). Father represented claimant. Titles are used to protect confidentiality and privacy.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Documents and testimony were received in evidence. The record was held open until February 16, 2023 for the parties to submit written closing arguments. The parties did not submit written argument.

The record closed and the matter was submitted for decision on February 16, 2023.

ISSUE

Whether claimant's disability, caused by Friedreich's Ataxia, makes him eligible under the Lanterman Act for services or supports from the Service Agency.

FINDINGS OF FACT

1. The Service Agency found Claimant ineligible for services and supports, as described below. On August 8, 2022, the Service Agency received the Fair Hearing Request submitted by Father on behalf of Claimant, his adult son. The hearing was scheduled after Father sent the Service Agency notice he was authorized as Claimant's, representative.

Application for Services and Supports

2. On January 15, 2022, Claimant, with his Father's assistance, submitted his intake application. Claimant answered no to whether he was suspected of having four of five categories of disability described in the Lanterman Act: 1) Intellectual Disability, 2) Autism Spectrum Disorder, 3) Cerebral Palsy, or 4) Epilepsy. A fifth category, as explained below, is related to Intellectual Disability.

3. Claimant, 35 years old, was born with Friedreich's Ataxia, a rare genetic disease that causes progressive damage to the nervous system leading to continually worsening loss of muscle coordination. The disease may have other severe complications. There is no cure.

4. Friedreich's Ataxia does not affect cognitive functioning, the ability to think and reason. Claimant is a graduate of California State University Northridge and suffers no mental or intellectual impairment.

5. Noticeably since he was about 14 years old, Claimant has lost more and more control of his balance and limbs. A physician diagnosed Claimant's Friedreich's Ataxia when he was 15 years old. Claimant is now mostly confined to bed and relies on his parents, who are concerned for their son's care in the future as they age.

Eligibility Evaluation

6. The Service Agency directed claimant's intake application to licensed psychologist Sandi J. Fischer, Ph.D., license number PSY11726. After earning her doctorate in 1987, Dr. Fischer gained experience as a psychologist at several institutions in California before establishing her private practice in 1990. In 2011, the Service Agency hired Dr. Fischer as a Staff Psychologist. Since 2017 she has been Co-Supervisor of the Service Agency's Clinical and Intake Departments.

7. On June 3, 2022, Dr. Fischer, as she testified, telephoned Father. Having reviewed Claimant's intake application, she explained that Claimant was not eligible for services or supports from the Service Agency because he did not meet the Lanterman Act's eligibility criteria.

8. Dr. Fischer testified regarding her evaluation of Claimant with respect to the eligibility criteria. The criteria are separated into the four categories set out above along with the fifth category, all described in Welfare and Institutions Code section 5412, subdivision (a)(1):

“Developmental disability” means 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 [and] . . . 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.

9. On June 6, 2022, the Service Agency sent Claimant its Notice of Proposed Action, providing him the same explanation of his ineligibility that Dr. Fischer had given Father by telephone. The notice stated more specifically that the Service Agency’s Interdisciplinary Eligibility Committee, not Dr. Fischer alone, had determined Claimant ineligible. The determination was based on the Lanterman Act’s criteria, Claimant’s intake application, and available records, including medical records.

10. Margaret M. Swaine, M.D., graduated from Tufts University. Her residency was at the University of California at Los Angeles, where she practiced for several years in general pediatrics and the treatment of developmental behaviors and neurologic disorders. Specializing in behavioral pediatrics and the treatment of children with developmental disabilities, Dr. Swaine has been the Service Agency’s Supervisor of

Medical Services since 2007. She is responsible for the completion of medical evaluations at the Service Agency, supervises nursing staff, is on the interdisciplinary staffing committee, and is available for medical consultation to personnel of the Service Agency.

11. Dr. Swaine described disabilities listed in the Lanterman Act and how they are diagnosed. Epilepsy, for instance, is a neurologic condition characterized by recurrent seizures as diagnosed by a neurologist. She described how she and the interdisciplinary team at the Service Agency evaluated Claimant, looking for neurological records from a neurologist as well as any psychological records and records from schools or educational institutions. Dr. Swaine and the team examine educational records to see whether a disability has had an impact on a claimant's development, especially before a child turns 18 years old, as an eligible condition must originate before 18 years of age.

12. Dr. Swaine and the interdisciplinary team performed a thorough review of such of Claimant's medical and educational records as were available. In this process Dr. Swaine learned of Claimant's disabilities and discussed with the team her understanding of their cause, Freidreich's Ataxia. She described it is a rare genetic condition that is neurodegenerative and progressive, affecting, among other things, nerve tissue in the spinal cord, resulting in a loss of muscle coordination. Dr. Swaine noted that Freidreich's Ataxia is a solely physical condition and, as such, excluded under the Lanterman Act. She and the team found that Claimant was ineligible for services or supports under the law.

Claimant's Evidence

13. Father was Claimant's only witness at the hearing. Father questioned whether the Service Agency evaluated Claimant adequately, as no one at the Service Agency examined Claimant in person. Claimant and his medical providers supplied records, and these Father said may have been taken into account, but otherwise Claimant's evaluation was via teleconference only.

14. Father and Claimant had months to prepare for the hearing. Father had some communication with a lawyer concerning his son's claim. Nonetheless Father stated he was overwhelmed by the hearing, not having known what to expect.

15. To counteract and remedy possible consequences of his being ill-prepared, Father agreed to submit a written final argument, with, if he and Claimant chose, the assistance of counsel, who might also represent Claimant. As noted above, Claimant submitted no written argument.

LEGAL CONCLUSIONS

1. Claimant did not meet his burden of proof. As the party seeking government services and a change in the status quo, the standard of proof Claimant was required to meet was proof by a preponderance of the facts under Evidence Code sections 115 and 500.

Principles of Law

2. Under Welfare and Institutions Code section 4507, "persons with developmental disabilities shall receive services pursuant to" the Lanterman Act. Thus,

the Service Agency may not disregard controlling law as set out in the Lanterman Act or extend services to a disability not covered pursuant to that law.

3. The particular provision of the Lanterman Act controlling the issue in this case is Welfare and Institutions Code section 5412, subdivision (a)(1), quoted above. Claimant's disability is caused by a disease, Freidreich's Ataxia, that does not come under any of the five categories of diseases or conditions that would make Claimant eligible for services and supports.

4. Besides being outside the five categories, Freidreich's Ataxia is a purely physical condition. Though it may cause disability, and is causing Claimant disability that becomes more and more debilitating with time, the Lanterman Act explicitly excludes it as grounds to lend a Service Agency's assistance, whether with services or supports.

5. For all of these reasons, Claimant is not eligible to receive services or supports under the Lanterman Act.

ORDER

Claimant's appeal of the Service Agency's decision that he is ineligible for services and supports under the Lanterman Act is denied.

DATE:

THOMAS LUCERO
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.