

**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. 2022090276

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 14 and May 11, 2023, by videoconference.

Dana Lawrence, Fair Hearing and Administrative Procedure Manager, appeared and represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant was represented by Claimant's mother (Mother), who appeared with the assistance of Spanish interpreters. (Party titles have been used to protect the privacy of Claimant and his family.)

During the March 14, 2023 hearing, ALJ reviewed NLACRC's position statement and found it did not sufficiently comply with Welfare and Institutions Code (Code) section 4712, subdivision (d)(1)(A). Without objection of the parties, the ALJ continued the matter for a second day of hearing, May 11, 2023, so that Service Agency could file additional documents in compliance with Code section 4712, subdivision (d)(1)(A). Specifically, Service Agency was ordered to file an amended position statement in Spanish, Claimant's representative's preferred language, and translate Exhibits 12, 19, 20, and 22 into Spanish. Service Agency timely complied with the ALJ's order.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision at the conclusion of the second day of hearing on May 11, 2023.

ISSUE

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.? (All further statutory references are to the Welfare and Institutions Code.)

EVIDENCE RELIED UPON

Documentary: NLACRC exhibits 1-33.

Testimonial: Dr. Heike Ballmaier, NLACRC's Intake & Psychological Services Supervisor, and Mother.

Jurisdictional Matters

1. Claimant is a six-year-old boy who lives at home with his Mother and approximately 18-year-old-brother, who is a regional center consumer under the qualifying condition of Fifth Category (Borderline Intellectual Functioning.) The primary language at home is Spanish. Claimant seeks eligibility for regional center services. Claimant was the product of a normal, full-term pregnancy and induced vaginal delivery.

2. On April 19, 2022, Mother filed an application on behalf of Claimant for regional center eligibility with NLACRC. Service Agency reviewed all available documentation, including psychological, educational records, and medical records. On July 20, 2022, a psychological assessment of Claimant was completed by NLACRC vendor, Dr. Larry Gaines, with Dr. Gaines providing a diagnosis of Language Disorder and Attention/Deficient Hyperactivity Disorder (Provisional).

3. On July 26, 2022, NLACRC's Interdisciplinary Eligibility Committee determined Claimant did not meet Lanterman Act eligibility requirements. On July 28, 2022, the Notice of Proposed Action (NOPA) was sent to Mother in her preferred language, Spanish, informing her of this decision. On August 25, 2022, NLACRC received Mother's Fair Hearing Request (FHR) appealing NLACRC's decision of ineligibility.

4. On September 2, 2022, NLACRC sent Mother a Deferred Informal Decision letter translated into Spanish. In accordance with the parties' agreement at the informal meeting, NLACRC gathered additional records and conducted additional review. On February 27, 2023, NLACRC's Interdisciplinary Eligibility Committee reconvened and determined Claimant is not eligible for regional center services. On

March 3, 2023, a translated final decision letter was sent to Mother regarding this decision.

Assessment and Medical History

5. Dr. Ballmaier, NLACRC's Intake & Psychological Services Supervisor, testified at hearing regarding regional center eligibility and the basis for NLACRC's denial of eligibility. As part of her testimony, Dr. Ballmaier described the records NLACRC reviewed and NLACRC's assessment of Claimant which led to Service Agency's conclusion Claimant is not eligible for regional center services because he does not have a developmental disability as defined by the Lanterman Act, as described below.

6. In July 2019, Los Angeles Unified School District (LAUSD) evaluators concluded Claimant was eligible for special education services based on Autism pursuant to California Code of Regulations, title five, section 3030, subdivision (1). Testing conducted by LAUSD demonstrated verbal and nonverbal communication and social interaction were significantly affected. In addition, evaluators observed behaviors including resistance to environmental changes or changes in daily routines. The evaluators recommended appropriate services.

7. Claimant received Early Intervention services at East Los Angeles Regional Center (ELARC) under the eligibility criteria of Developmental Delay. In July 2019, Claimant was assessed to determine regional center eligibility by Dr. Victor C. Sanchez. Claimant was diagnosed with Language Disorder, with the need to rule out a possible diagnosis of Oppositional Defiant Disorder (ODD) and Attention Deficit Hyperactivity Disorder (ADHD). ELARC did not find Claimant eligible for regional center services. Mother appealed the decision. Mother asserted to NLACRC that Claimant had a

second psychological evaluation after the initial report was completed by Dr. Sanchez where it was re-determined that Claimant was eligible under Autism for regional center services. Mother did not provide the claimed re-assessment to NLACRC. There is no record of the re-assessment in documents gathered by NLACRC from ELARC.

8. In April 2022, Lancaster School District (Lancaster District) evaluators concluded Claimant was temporarily eligible for special education services pending action at Claimant's next Individualized Education Program (IEP) Team meeting. In October 2022, Antelope Valley IEP evaluators concluded Claimant should be in a General Education setting with Specialized Academic Instruction and Language and Speech services. In May 2022, a triennial evaluation was conducted through Lancaster District, where it was recommended Claimant did not qualify for special education services. Evaluators determined Claimant did not qualify as a student with Autism and Speech and Language Impairment. Based on assessment data, it was determined Claimant had an overall estimated cognitive ability within the Slightly Below Average range. It was reported Claimant's behaviors did not adversely impact his academic and social functioning.

9. In May 2022, NLACRC conducted a telephonic social assessment of Claimant for redetermination to rule out Autism based on Mother's request and referral by Claimant's primary doctor, Dr. Malakoti. Claimant's case was transferred from ELARC as a closed case. Mother reported concerns in the areas of Claimant's motor, self-care, safety awareness, cognitive, communication, and social/behavioral as being delayed and aggressive.

10. In a June 2022 letter, the Children's Bureau described what services had been provided to Claimant since June 2021 based on his diagnosis of Oppositional

Defiance Disorder. Claimant received mental health services to decrease physical outbursts (crying, throwing self to floor, screaming, fidgeting, and pulling his hair).

11. A. In July 2022, NLACRC referred Claimant to Dr. Larry E. Gaines for a psychological evaluation to determine current levels of cognitive and adaptive functioning limited to the assessment of developmental disabilities, including Intellectual Disability and/or Autism. Dr. Gaines' evaluation included clinical interviews, review of records, and administration of the following tests: Wechsler Pre School and Primary Scale of Intelligence – IV; Beery-Buktenica Developmental Test of Visual-Motor Integration; Autistic Diagnostic Interview – Revised; Autistic Diagnostic Observation Scale-2 Module 2 and Aspects of Module 1; and Vineland Adaptive Behavior Scale Third Edition. Dr. Gaines described Claimant as a "different child" than the one described in psycho-educational school system, which indicated "Autistic-like characteristics." (Ex. 12, p. A456.)

B. Dr. Gaines observed Claimant as "friendly," with "inconsistent play and inconsistent eye contact, but overall, . . . able to be engaged," "very active," "no reported sensory problems, self-stimulatory behavior, or other rituals that would be associated with Autism." (Ex. 12, p. A457.) In sum, Dr. Gaines diagnostic impressions of Claimant, based on observation and testing data, was that Claimant did not meet the required deficits for a diagnosis of Intellectual Disability. In addition, Dr. Gaines opined Claimant did not meet the diagnosis for Autism Spectrum Disorder because Claimant did not exhibit required deficits in social communication, social interaction and restricted, repetitive patterns of behavior. (*Ibid.*)

C. According to Dr. Gaines, Claimant's "primary presentation was of a child with language delay and aspects of an Attention/Deficient Hyperactivity Disorder." (Ex. 12.) While Dr. Gaines noted Claimant did imitate some "unusual

behaviors, such as covering his ears or making odd movements,” Claimant had “no restrictive or repetitive behaviors . . . during the evaluation.” (*Id.*) Dr. Gaines noted that while Mother described Claimant as having what might be considered intellectual disability based on her report of significant learning and adaptive behavior delays, the objective cognitive testing was not consistent with intellectual disability. Dr. Gaines concluded Claimant met the criteria for the diagnoses of Language Disorder and Attention/Deficient Hyperactivity Disorder (Provisional).

12. In October 2022, Lancaster District conducted a re-evaluation of Claimant to determine Claimant’s eligibility and need for special education services based on Mother’s request Claimant be placed in a Special Day class due to concerns for hyperactivity, autistic like characteristics, behavior and communication. Claimant’s educational eligibility in Lancaster District is under Other Health Impairment per the California Educational Code and he receives some special education services from Lancaster District based on that eligibility category with placement in the least restrictive General Education classroom setting. During the evaluation, Claimant was able to make appropriate eye contact, respond well to social situations, and express himself in Spanish. Based on review of records, Mother interview, teacher interview, previous assessment data, and current rating scales, the evaluator determined Claimant had difficulty following school and classroom rules even when spoken to in his primary language, Spanish. The evaluator opined that Claimant’s inattention and hyperactivity appeared to be adversely impacting his educational performance in the school and home setting. However, while Lancaster District continued to approve special education services, it denied Mother’s request for Special Day Class placement for Claimant. (Ex. 24.) As of the date of hearing, Claimant remains in a General Education class, receiving 120 minutes monthly of Language and Speech services and 525 minutes weekly of Specialized Academic Instruction.

13. In January 2023, Claimant was evaluated for a Speech/Language Evaluation by Lancaster District for an Independent Educational Evaluation (IEE) in the area of Speech and Language at the request of Mother. (Ex. 33.) The evaluator concluded Claimant's language skills are within the borderline range for a child his age. Claimant demonstrated strengths in the area of receptive language, but weaknesses in the area of expressive language both when assessed in a bilingual measure and when assessed in English alone. The evaluator noted that Claimant's language profile was impacted by Claimant's inattentiveness and discussed Claimant's results in the context of the language profile of a child with Attentive Deficit Hyperactivity Disorder.

14. Dr. Ballmaier testified at hearing that based on NLACRC's review of Claimant's medical records, school records, and evaluations, Claimant does not currently meet the required qualifying diagnosis guidelines to be eligible for regional center services under the Lanterman Act. (Exs. 19–22.) Claimant's prior LAUSD eligibility for special education services under Autism is unpersuasive because the law and regulations that govern a special education Autism diagnosis are different from the requirements for Lanterman Act eligibility based on Autism. Notably, more recent Lancaster District school evaluations do not support an Autism diagnosis. Dr. Ballmaier opined that while Claimant was ineligible for regional center services, Claimant's delays, behaviors, and speech and language issues require treatment and services, such as potential medication to address Attention Deficit Hyperactivity Disorder and school based special education services.

Claimant's Evidence

15. Mother testified at hearing in support of a finding of eligibility for Claimant by NLACRC. She expressed her belief the decision to deny Claimant NLACRC

eligibility and Lancaster District's denial of her request for Special Day Class placement for Claimant was discriminatory. Mother is concerned because Claimant has limited services and supports. Mother does not agree with Dr. Gaines' July 2022 psychological evaluation which determined Claimant did not qualify under Intellectual Disability or Autism because Claimant was previously found eligible for special education services under Autism by LAUSD and still presents with several characteristics of a child on the spectrum and with cognitive delays.

16. Mother's educational concerns for Claimant have increased since his eligibility for special education services were removed by Lancaster District. Mother is in the process of challenging the school findings and continues to seek to have Claimant placed in a special education class. Based on Mother's observation, Claimant presents with the same behaviors and skill deficits of his older brother, who is a regional center consumer.

17. Mother described Claimant's behavior as not age appropriate. Among other behaviors, Mother reported Claimant as still wearing diapers all day and night and requiring assistance at school and home. Mother assists Claimant with his daily routines including dressing; he primarily communicates with gestures, such as pointing and grabbing hands. Mother reported Claimant's speech delays have been present since early childhood and he cannot be understood by strangers.

18. Mother is concerned Claimant's developmental delays will continue and worsen if he does not receive supports and services as a regional center consumer.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (§§ 4700-4716.) Mother requested a hearing, on Claimant's behalf, to contest Service Agency's denial of Claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-4.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him or her to prove by a preponderance of the evidence that he or she meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.)

"Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. 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.

4. To prove the existence of a qualifying developmental disability within the meaning of Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Code section 4512, subdivision (1)(1):

"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:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

5. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

6. In this case, no evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that he has either condition. The evidence of cognitive functioning indicates that Claimant does not have intellectual disability, or a condition closely related to intellectual disability or requiring treatment similar to that required by individuals with mental retardation. While Claimant has

speech and language delays and low average cognition overall, these are insufficient to establish the presence of a developmental disability.

7. Claimant's behaviors were not sufficient to lead to a diagnosis of Autism. Mother's argument that her experience with Claimant's behavior qualifies him for a diagnosis of Autism is unpersuasive because it is inconsistent with that observed during Claimant's NLACRC's psychological evaluation and school assessments.

8. In this case, Claimant has not established through a preponderance of the evidence that he is currently eligible to receive regional center services. (Factual Findings 1-18; Legal Conclusion 1-7.)

ORDER

Claimant's appeal is denied. Service Agency's determination that Claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and

Institutions Code section 4713 within 15 days of receiving this decision, or may appeal this decision to a court of competent jurisdiction within 180 days of receiving this final decision.