

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

In the Matter of:

CLAIMANT

and

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER

OAH No. 2022100705

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on February 15, 2023, by videoconference and telephone.

Claimant's legal guardian appeared on behalf of claimant, who was not present.

Tami Summerville, Appeals Representative, represented South Central Los Angeles Regional Center, the service agency.

The record was closed, and the matter was submitted for decision on February 15, 2023.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD), intellectual disability (ID), because he has a condition closely related to intellectual disability or because he has a condition that requires treatment similar to that required for individual with an intellectual disability (the Fifth Category)?

FACTUAL FINDINGS

1. Claimant is a nine-year-old boy living in a foster care setting.
2. Claimant was removed from his biological parents' care due to neglect. Prior to his current placement, claimant was in seven different foster placements. Claimant's biological brother is currently in the same foster care setting.
3. Claimant's foster mother submitted a referral to South Central Los Angeles Regional Center (SCLARC) for an assessment of claimant's regional center eligibility on a date not established by the record.
4. On September 23, 2022, SCLARC issued a letter determining that claimant was not eligible for regional center services because he did not have a developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act). The letter also set forth the determination that claimant was not substantially disabled as a result of having ASD, ID, seizures, Cerebral Palsy, or the Fifth Category.
5. On October 8, 2022, claimant submitted a fair hearing request (FHR). This hearing followed.

Evaluations

6. On April 20, 2021, Kristen Wheldon, Psy.D., wrote a report regarding her psychological evaluation of claimant. Dr. Wheldon reviewed records including medical records, claimant's health and education passport, a prior psychological report, and records from San Gabriel/Pomona Regional Center where claimant had previously requested services.

7. Dr. Wheldon observed claimant and opined that he was calm, cooperative, and had a generally appropriate affect. Dr. Wheldon noted that claimant responded well to positive reinforcement "with specific focus on engaging with tasks." Dr. Wheldon opined that claimant did not present with ID, rather he had learning disorders "specific to both reading and written expression." Dr. Wheldon wrote that claimant met the criteria for post-traumatic stress disorder (PTSD). Dr. Wheldon diagnosed claimant with PTSD, specific learning disorder with impairment in reading, and specific learning disorder with impairment in written expression.

8. Yoselin De Los Santos, Psy.D., performed a psychological evaluation of claimant on July 18, 2022. Dr. De Los Santos evaluated claimant at the request of SCLARC to assess for developmental delays that could be attributed to ID or ASD. Dr. De Los Santos reviewed records, administered diagnostic tests, and observed claimant.

9. Dr. De Los Santos observed claimant in his home by videoconference. Dr. De Los Santos noted that claimant made appropriate eye contact, communicated in complete sentences, and was responsive to both his foster mother and Dr. De Los Santos. Dr. De Los Santos observed that claimant was easily distracted and required redirection. Dr. De Los Santos did not observe claimant engage in any repetitive mannerisms or play, which would be consistent with a diagnosis of ASD. Dr. De Los

Santos did not observe that claimant had any sensory related sensitivity, or difficulty making transitions.

10. Dr. De Los Santos administered several diagnostic tests to claimant including the Developmental Profile 4 (DP-4), Adaptive Behavior Assessment System, Third Edition (ABAS-3), and the Autism Diagnostic Interview-Revised (ADI-R). The DP-4 measures development across five areas: physical, adaptive behavior, social-emotional, cognitive, and communication. Dr. De Los Santos administered only the cognitive section. Claimant's score fell in the "delayed" range. Claimant's score on the ABAS-3 indicated his overall level of adaptive behavior was in the extremely low range.

11. Two different specialists administered the Social Responsive Scale (SRS) to claimant. On one SRS, claimant scored in the severe range which indicates the deficiencies in reciprocal social behavior are "clinically significant" and could lead to "severe interference with everyday social interactions." Dr. De Los Santos cautioned that the results of the SRS do not equate to a diagnosis of ASD. On the second SRS, claimant scored in the moderate range.

12. Dr. De Los Santos reviewed a psychological evaluation dated May 28, 2020, and an Individualized Education Plan (IEP) dated December 6, 2021. During the psychological evaluation, claimant was administered the Autism Diagnostic Observation Schedule-2 (ADOS-2). Claimant's performance on the ADOS-2 was not consistent with the diagnosis of ASD. The May 2020 psychological evaluation also included that claimant's IQ fell within the below average range. More specifically, his verbal comprehension and processing speed scores fell within the below average range. Claimant's visual spatial domain, and fluid reasoning scores fell within the average range. None of claimant's scores fell in any range that indicated ID.

13. Dr. De Los Santos diagnosed claimant with unspecified trauma and stressor related disorder. Dr. De Los Santos noted that claimant's history indicated diagnoses of attention deficit hyperactivity disorder (ADHD), disruptive behaviors disorder, encopresis (an inability to control one's bowels), and enuresis (an inability to control one's bladder). Dr. De Los Santos opined that claimant did not meet the criteria for an ASD diagnosis, noting that claimant's biological mother had abused drugs while she was pregnant with claimant.

14. On March 8, 2022, claimant underwent an IEP review. The review noted that claimant was reading at a kindergarten grade level. Claimant's math scores indicate that his math grade level ranged between kindergarten and second grade. The IEP noted that claimant had difficulty engaging in class and participating in classroom discussions or activities. Claimant had been placed in the resource specialist program with specialized academic instruction. This IEP increased his hours of specialized academic instruction to 240 hours per week.

15. Laurie Brown, Ph.D./Psy.D. is on the eligibility team for ASD and ID at SCLARC. Dr. Brown is a license clinical psychologist. She has a Bachelor of Arts degree in psychology, a master's degree in clinical psychology, and a doctoral degree in clinical psychology. Dr. Brown is a staff psychologist at SCLARC where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Dr. Brown is an expert in the assessment of individuals for eligibility for regional center services. Dr. Brown testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services.

16. In performing her evaluation, Dr. Brown reviewed claimant's records including the reports by Drs. Wheldon and De Los Santos, claimant's health and education passport, and the IEP. Dr. Brown opined that claimant's measured IQ

precluded him from a diagnosis of ID. Dr. Brown explained that the disconnect between claimant's IQ and his performance indicate a learning disorder rather than ID. She explained that with ID one would expect the IQ and performance to be more closely aligned. Dr. Brown stated that an individual with ID would be unable to score in the average range on an IQ test and their performance on any cognitive test would show similar deficiencies. Claimant's IQ scores range from average to below average. Dr. Brown opined that claimant's difficulties in school were indicative of the trauma he suffered and the instability of his placements.

17. Dr. Brown noted that learning disabilities, solely psychiatric or physical disorders were generally excluded from eligibility for services. Dr. Brown acknowledged that claimant showed some of the symptoms of ASD, but that they were directly attributable to his PTSD and unspecified trauma and stress-related disorder diagnoses, neither of which qualify an individual for regional center services.

Claimant's Additional Evidence

18. Claimant's current social worker, Aaron Rivera, testified on behalf of claimant at hearing. Rivera stated that claimant struggles with ADHD, physical aggression, and frustration. Rivera has been working with claimant for approximately two months and is still in the beginning stages of learning about claimant and working to engender claimant's trust.

19. Claimant's foster mother testified at hearing on behalf of claimant. She stated that claimant has been placed with her since June 2020. She is concerned because claimant is not retaining any information. She stated that claimant does not know how to ride a bike, is engaging in repetitive behaviors, and he is not using the bathroom appropriately. She recently learned that claimant's biological mother used

drugs while she was pregnant with claimant. As a result, claimant's foster mother has arranged for claimant to be tested for fetal alcohol syndrome. Claimant's foster mother has engaged claimant in psychotherapy, and he is taking medication for his ADHD. Claimant will soon be receiving applied behavioral analysis therapy. Claimant's biological brother has been diagnosed with ADHD and is receiving regional center services. Claimant's foster mother stated she is just trying to get claimant any and all the help he needs.

Evaluation

20. Claimant has not been diagnosed with ASD, ID, cerebral palsy, seizures, a condition closely related to intellectual disability or a condition that requires treatment similar to that required for individual with an intellectual disability. The psychologists who evaluated claimant attribute any behaviors consistent with ASD to claimant's diagnosis of PTSD and unspecified trauma and stress related disorder. Dr. Brown attributes his poor performance in school to a learning disability. claimant has failed to establish that he has ASD, ID, a condition closely related to intellectual disability, or because he has a condition that requires treatment similar to that required for individual with an intellectual disability.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code¹ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded² Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Act includes intellectual disability, cerebral palsy, epilepsy, 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. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The term “intellectual disability” has replaced the formerly used term of “mental retardation.”

person's age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met his burden of establishing that he is eligible for regional center services. He has failed to establish that he has a diagnosis of ASD, ID, a condition closely related to intellectual disability, or he has a condition that requires treatment similar to that required for individual with an intellectual disability. (Factual Finding 20.) The evidence demonstrated that claimant does exhibit some behaviors consistent with ASD, but they are attributable to his diagnosis of PTSD. (Factual Finding 20.)

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE: February 24, 2023

TRACI C. BELMORE
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.