

**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. 2023010621

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 21, 2023.

Claimant was represented by her mother (Mother). (Family titles are used to protect the privacy of Claimant and her family.)

South Central Los Angeles Regional Center (SCLARC or Service Agency) was represented by Tami Summerville, Appeals & Governmental Affairs Manager.

Testimony and documents were received into evidence. The record was closed on April 21, 2023.

ISSUE

Whether Service Agency should conduct an additional assessment of Claimant to determine if she is eligible for regional center services under a diagnosis of Autism Spectrum Disorder (ASD), Intellectual Disability (ID), or a condition found to be closely related to ID or require treatment similar to that required for individuals with ID.

EVIDENCE RELIED UPON

Documents: SCLARC's Exhibits 1-10.

Witnesses: Laurie McKnight Brown, Ph.D., SCLARC Lead Staff Psychologist, and Mother.

FACTUAL FINDINGS

Claimant's Background

1. Claimant is a nine-year old girl who lives with Mother and her 13-year-old sister. Claimant's 16-year-old sister was placed into foster care approximately three years ago. Claimant's parents are no longer together, and Father is not involved with her care.
2. Claimant is currently in the third grade and attends class virtually at an elementary school that is part of Los Angeles Unified School District (LAUSD).

Individualized Educational Program

3. Claimant was found eligible for special education services under the eligibility criteria of specific learning disability (SLD) and "Other Health Impairment." Claimant's initial individualized education program (IEP) meeting was held with the LAUSD on September 23, 2021.

4. During the initial IEP meeting, it was noted that though Claimant functioned within the "[a]verage range of cognitive ability," the deficits in her "social/emotional and behavioral functioning" were negatively impacting her educational access and performance. (Exh. 6, pp. A49-A50.)

5. Claimant's writing, reading and math skills had been assessed using the Woodcock Johnson IV teacher observations and teacher interview. Claimant's reading and written language skills were "Very Low" while her math skills were within the average range for her age. (Exh. 6, p. A51.) The IEP team determined Claimant's "Other Health Impairment" was impeding her progress and involvement in the general education reading and writing curriculum. (*Ibid.*)

6. An IEP meeting was held on September 2022. During the meeting, the IEP team determined that Claimant should continue virtual classroom instruction to mitigate the likelihood of Claimant missing school.

SCLARC Psychosocial Assessment

7. On July 19, 2022, SCLARC Service Coordinator (SC) Barbara Linares conducted a psychosocial assessment interview of Mother by telephone. SC Linares prepared a report of the interview and her recommendations, which was admitted as Exhibit 3 (Psychosocial Assessment.)

8. During the interview, Mother reported Claimant reached all her developmental markers as an infant but began exhibiting concerning behaviors when she started school. Mother reported Claimant can state her full name and age but is unable to read, write, add or subtract. Mother also reported Claimant makes limited eye contact, has difficulty socializing with other children, is aggressive and unable to follow directives. When Claimant is frustrated, she bangs her head against the wall and tantrums.

9. Claimant has been receiving mental health services at Kedren Health Services (Kedren) since 2016 and has been diagnosed with "bipolar disorder, current episode mixed, severe without psychotic features." (Exh. 3, p. A33.) Though Claimant has been prescribed medication and receives therapy, Claimant's behavior has not improved.

10. Based on the information Mother provided, SC Linares recommended the Service Agency: (1) obtain a psychological evaluation; (2) obtain Claimant's medical and school records; (3) refer Claimant for appropriate educational placement; and (4) present Claimant's case to the interdisciplinary eligibility team to determine eligibility.

Psychological Assessment

11. Service Agency referred Claimant to Robert Koranda, Psy.D., for a psychological assessment of Claimant's current levels of cognitive and adaptive functioning to determine whether Claimant presently meets the criteria for a developmental disability, such as ID or autism. Dr. Koranda conducted the evaluation on March 22, 2022, and prepared a report of his findings and conclusions, which was admitted as Exhibit 2 (Psychological Assessment).

12. The assessment included clinical interviews with Mother on September 17, 2022 and September 21, 2022; review of unspecified records; behavioral observations of Claimant and the administration of the Memory Validity Profile (MVP), Leiter International Performance Scale, Third Edition (Leiter-3), Social Responsiveness Scale, Second Edition (SRS-2), the Autism Diagnostic Interview - Revised (ADI-R) and Adaptive Behavior Assessment System, Third Edition, (ABAS-3).

CLINICAL INTERVIEW

13. During Mother's interview, she reported Claimant engaged in a pattern of excessive crying and tantrums from a young age and is "very temperamental." (Exh. 2, p. A19.) Claimant has significant problems interacting with others. Claimant taunts her older sister, destroys property, bullies younger classmates, and is defiant with teachers. In addition to her ongoing behavioral problems, Mother reported Claimant is unable to focus, hyperactive, makes limited eye contact, and is easily distractable. Mother was especially concerned because Claimant appeared to be demonstrating characteristics she observed in Claimant's 16-year old sister, who has been diagnosed with autism and schizophrenia

14. Mother reported Claimant was previously been diagnosed with bipolar disorder and attention-deficit/hyperactivity disorder (ADHD) and began receiving mental health services through Kedren in 2016. Services were discontinued for several years and resumed in 2020. Mother noted that due to a recent change in Claimant's medication, there have been improvements to her behavior and sleep.

BEHAVIORAL OBSERVATIONS

15. During the in-person portion of the assessment, Dr. Koranda observed Claimant was able to answer questions during the evaluation but only made

intermittent eye contact with him and had difficulties sustaining attention. Dr. Koranda did not observe Claimant exhibiting any overt behaviors that were suggestive of autism in that she did not exhibit any restricted, repetitive behaviors or any unusual preoccupations.

STANDARDIZED TESTS

16. Dr. Koranda administered the MVP to assess whether Claimant was engaged in the testing process and providing responses that could later be interpreted as a valid reflection of her abilities. Claimant obtained a test score of 16/16, which indicated Claimant's performance on subsequent tests were "likely" "an accurate representation of her true cognitive abilities." (Exh. 2, p. A21, emphasis in original.)

17. To assess Claimant's cognitive functioning, Dr. Koranda administered the Cognitive Battery assessment of the Leiter-3 and Claimant obtained a nonverbal IQ score of 108, placing her in the Average Range.

18. In order to assess Claimant for autism, Dr. Koranda administered the SR-2, ADI-R, and the ABAS-3.

A. The SR-2 is a 65-item, objective measure of symptoms associated with autism. Responses to the SR-2 are calculated to produce a Total Score and two subdomain scores in the areas of Social Communication and Interaction (SCI) and Restricted Interests and Repetitive Behavior (RRB). Based on Mother's answers, Claimant scored in the "Severe Range" on both subdomains. Dr. Koranda, however, expressed that Claimant's scores were not reflective of his interactions with Claimant but rather are indicative of either overreporting or the presence of mental health symptoms.

B. The ADI-R is a clinical interview of caregivers of children and adults in the areas of reciprocal social interaction; communication and language; restricted, repetitive, and stereotyped patterns of behavior; and abnormality evident at or before 36 months. An autism diagnosis is indicated when scores meet or exceed specified minimum cutoff scores. Based on Mother's responses, Claimant's scores in each of the specified areas were below the cutoff score.

C. The ABAS-3 is a comprehensive assessment of adaptive skills in three different domains: Conceptual, Social, and Practical. The three scores in these three areas are combined to yield a General Adaptive Composite (GAC), which is a standard score that summarizes an individual's performance across all adaptive behavior domains. Claimant obtained a GAC of 72, which places her in the Low Range, indicating Claimant has low adaptive skills when compared to others her age.

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 5TH EDITION

19. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) is a generally accepted manual listing the diagnostic criteria and identifying factors of most known mental disorders and was utilized by Dr. Koranda in his evaluation. The ALJ took official notice of its provisions pursuant to Government Code section 11515.

INTELLECTUAL DISABILITY

20. According to the DSM-5, the essential features of ID include: (1) deficits in general mental abilities; (2) deficits in everyday adaptive functioning that are directly related to deficits in general mental abilities; and (3) an onset of the deficits during the

developmental period. (Exh. 2, p. A25; see also Exh. 8, p. A86.) (The text revision of the DSM-5 (DSM-5 TR), which was published in 2022, has replaced the term ID with the term intellectual developmental disorder. The description of its essential features, however, remain unchanged.)

21. Dr. Koranda found Claimant did not appear to have deficits in general mental abilities because Claimant scored within the average range on the Leiter-3. Dr. Koranda also found that though the results of the ABAS-3 indicated that Claimant had deficits in her everyday adaptive functioning, the deficits were not directly related to any deficits in general mental abilities. Using the criteria for ID contained in the DSM-5, Dr. Koranda found Claimant did not meet the criteria for ID.

AUTISM SPECTRUM DISORDER

22. According to the DSM-5, "the essential features of [autism] include persistent deficits in social communication and social interaction across multiple contexts, in addition to restricted, repetitive patterns of behavior, interests, or activities." (Exh. 2, p. A25, see also Exh. 7.)

23. Dr. Koranda did not find Claimant had persistent deficits in social communication and social interactions. Even though Claimant only made intermittent eye contact, she did not demonstrate any deficits in her ability to engage in back-and-forth conversation, she shared her interests, and appropriately utilized nonverbal communication. Dr. Koranda also noted Claimant's interests are typical of similarly aged peers, she seeks to share enjoyment with others, recognizes and offers comfort, and shares her possessions. Dr. Koranda acknowledged Claimant did exhibit problematic behavior, but he attributed those to Claimant's other mental health symptoms.

24. Dr. Koranda also did not find Claimant exhibited restricted, repetitive patterns of behavior, interests, or activities. Dr. Koranda noted Mother reported Claimant had a history of flicking her fingers in front of her face, along with flapping and twisting her arms but did not observe any stereotyped or repetitive motor movements during the assessment. Claimant's speech was easily understood and she did not exhibit any significant preoccupations with unusual objects.

25. Based on his observations, Dr. Koranda found Claimant did not meet the DSM-5 criteria for autism.

DIAGNOSIS

26. Dr. Koranda noted Claimant has significant deficits in her attention and a tendency to engage in impulsive behavior based upon information provided by Mother, as well as his own behavioral observations during the assessment session. Dr. Koranda also found Claimant has significant behavioral problems including aggressive behavior, episodes of defiance against people in authority, and difficulty following the rules based on Mother's report. Dr. Koranda diagnosed Claimant with ADHD (by history), and Unspecified Disruptive, Impulse-Control, and Conduct Disorder.

Interdisciplinary Eligibility Committee

27. Service Agency's Interdisciplinary Core Staff Team met on November 8, 2022. They reviewed the Psychosocial Assessment and Psychological Assessment and concluded Claimant does not have a qualifying diagnosis or a developmental disability that would make her eligible for services under the Lanterman Act. A letter notifying Mother of SCLARC's determination was sent to Mother on November 9, 2022. Mother filed a Fair Hearing Request on November 30, 2022.

Dr. Brown's Testimony

28. Laurie McKnight Brown, Ph.D., SCLARC's lead psychologist consultant, testified on behalf of Service Agency. Dr. Brown's many duties at SCLARC include reviewing the work of other psychologists and participating in the interdisciplinary eligibility team (eligibility team).

29. Dr. Brown explained that when making a determination on eligibility, Service Agency does not rely solely on a psychological assessment. The eligibility team also reviews any other available records, including the psychosocial assessment and any educational records.

30. After reviewing Claimant's Psychosocial Assessment and Psychological Assessment, the eligibility team determined Claimant did not suffer from autism, ID, or a condition found to be closely related to ID or require treatment similar to that required for individuals with ID, commonly referred to as Fifth Category (Fifth Category).

31. Dr. Brown explained that the evidence does not indicate Claimant has a developmental disability which would make her eligible for regional center services. The results of the tests administered by Dr. Koranda during the Psychological Assessment do not support either an autism or ID diagnosis. All testing by Dr. Koranda indicated Claimant's cognitive abilities are average and there is no evidence to suggest the assessment instruments used to measure Claimant's cognitive abilities are invalid.

32. Further, as Claimant's deficits are not due to any cognitive deficits, Claimant requires treatment different from an individual with ID to address those deficits. Specifically, an individual with ID would require treatment that is long-term,

broken down into small steps, repetitive, and closely supervised. Because Claimant's IQ was found to be in the Average Range, she does not require those supports.

Mother's Testimony

33. Mother noted Claimant is almost nine years old but is unable to tie her own shoelaces, comb her hair, read very well, or write a complete sentence. (Claimant has since turned nine years old.) Mother believes these are all signs that indicate Claimant has cognitive deficits. At a minimum, Mother asserts Claimant should be eligible for regional center services under a Fifth Category diagnosis.

34. Mother also believes Claimant exhibits signs of autism. Mother listed Claimant's behaviors which she believes indicate Claimant has autism: Claimant exhibits inappropriate responses to social situations; she has no concern for her own safety; she gets upset when her routines are changed; she cannot transition from task to task; she cannot make friends; she will flap her arms "occasionally;" she cannot self-regulate and has violent outbursts, banging her head on the wall; she fixates on topics; she smells everything; she puts non-food items in her mouth; she repeats things over and over again; and she is very hyperactive and impulsive.

35. Mother believes Claimant would benefit from applied behavior analysis (ABA) services or possibly occupational therapy, but Claimant's insurance provider, LA Care, has directed her to obtain services from the regional center. Mother expressed frustration that whenever she has tried to obtain services for Claimant through the various agencies, including the school district, mental health services and health insurance, each agency points to the other.

36. Mother's testimony was credible and compelling, and it did not appear she was exaggerating Claimant's symptoms or misstating her deficits.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst., §§ 4700-4716.) Claimant requested a hearing to contest SCLARC's denial of Claimant's eligibility for services and supports under the Lanterman Act and therefore jurisdiction for this appeal was established.

Standard and Burden of Proof

2. The burden of proof is on the individual who is seeking to establish eligibility for government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that the Service Agency's decision is incorrect by a preponderance of the evidence.

Evaluation

3. In order to be eligible to receive services from a regional center, an individual must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines a "developmental disability" as:

[A] disability that originates before an individual attains age 18 years, 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. California Code of Regulations, title 17, (CCR) section 54000 similarly defines "developmental disability" as a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectually disabled individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap.

5. Pursuant to CCR section 54000, subdivision (c), developmental disabilities do not include conditions that are: "(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder . . . [¶] (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss. [¶] (3) Solely physical in nature . . .

6. For an individual with a developmental disability to qualify for regional center services, the qualifying developmental disability must also function as a

"substantial disability." A "substantial disability" means there are "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." (Welf. & Inst., § 4512, subd. (1)(1); see also CCR, § 54001, subd. (a)(2).)

Analysis

INTELLECTUAL DISABILITY

7. Claimant did not present any evidence which indicates she has an ID. There was no indication Claimant has ever been diagnosed with ID or has deficits to her cognitive abilities. the only psychological assessment performed indicates Claimant does not have deficits in her cognitive abilities. (Factual Finding 17.) This conclusion is bolstered by Claimant's IEP which also found Claimant to have an "[a]verage range of cognitive ability." (Factual Finding 8.) Based on the forgoing, Claimant failed to present evidence which would establish Claimant is eligible for regional center services based on ID.

FIFTH CATEGORY

8. Fifth Category eligibility requires that the qualifying condition be "closely related to intellectual disability" or "to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst., § 4512.) The definitive characteristics of ID include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" or "similar" to ID, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with ID.

9. Claimant has not demonstrated that she suffers a condition similar to ID. Specifically, there is no evidence Claimant has any impairments to her cognitive functioning. Claimant also did not any evidence that Claimant has ever been found to need treatment similar to individuals with an ID. Instead, the evidence suggests the deficits to Claimant's intellectual or social functioning are due to a psychiatric disorder and/or learning disability. Impaired intellectual functioning due to psychiatric condition or a learning disability, however, is not a covered developmental disability under the Lanterman Act. (Legal Conclusion 5.) Based on the forgoing, Claimant failed to establish by a preponderance of the evidence Claimant is eligible for regional center services based on a Fifth Category condition.

AUTISM

10. Claimant did not present any evidence she has ever been diagnosed with autism. After conducting psychological testing, Dr. Koranda found Claimant did not exhibit persistent deficits in social communication or interaction or any restricted, repetitive patterns of behavior, interests or activities to warrant an autism diagnosis. Based on the forgoing, Claimant failed to establish by a preponderance of evidence Claimant is eligible for regional center services based on autism.

Request for New Assessment

11. Claimant requests a new assessment because she disagrees with Service Agency's decision. There was no evidence presented at hearing that Claimant believes Dr. Koranda's assessment is inaccurate or incomplete. Claimant simply objected to Service Agency's decision, which is not grounds for a new assessment. Therefore, Claimant's request for a new assessment is denied.

ORDER

Service Agency's determination that Claimant is not eligible for regional center services is sustained. Claimant's appeal of that determination and request for a reassessment is denied.

DATE:

NANA CHIN

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 the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.