

**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. 2023010667

DECISION

Laurie Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 24, 2023.

Claimant was represented by her mother (Mother). Claimant and Mother are identified by titles to protect their privacy.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (Regional Center or SCLARC).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on April 24, 2023.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

Documentary: SCLARC's exhibits 1-6.

Testimonial: Laurie McKnight Brown, Ph.D., SCLARC Lead Psychologist Consultant, and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a five-year-old girl. Mother submitted an application to Regional Center requesting regional center services for Claimant.
2. On November 23, 2022, Regional Center sent Mother a letter and a Notice of Proposed Action (NOPA) notifying her of its determination that Claimant is not eligible for services because she is not substantially disabled despite having Autism Spectrum Disorder (ASD). (Exh. 1, A6-A7.)
3. On December 12, 2022, Mother filed a fair hearing request, on Claimant's behalf, to appeal the Regional Center's decision. Mother indicated she was requesting a hearing because Claimant "needs speech therapy" "social skills and other services from the regional" center due to ASD. (Ex. 1, A5)

4. On February 17, 2023, a voluntary informal meeting was held pursuant to Welfare and Institutions Code section 4710.7. Mother explained that she is concerned about Claimant because she wears training pads and will not use the toilet, is a picky eater, cries and screams a lot, and hates being in the car. Based on the Regional Center's review of the assessments completed, and the information provided, SCLARC upheld its decision to deny eligibility based upon its conclusion that Claimant's ASD is not substantially disabling, pursuant to Welfare and Institutions Code section 4512.

5. All jurisdictional requirements were met. This hearing ensued.

Claimant's Background

6. Claimant lives at home with Mother and four half-siblings, ages six to 18. An aunt, uncles and grandparents also live in the home.

Psycho-Social Report

7. A Psycho-Social report was prepared for SCLARC on May 10, 2022. Claimant is able to run, walk, jump, kick a ball, and go up and down stairs. She has good fine motor skills. Claimant makes good eye contact. She dislikes being around other children, prefers to play on her own, and will only play briefly with her siblings or other children before becoming aggressive. Claimant can communicate in complete sentences and others are able to understand her speech. SCLARC recommended that a psychological assessment be conducted, Claimant be referred for appropriate educational placement, medical and school records be requested, and all findings be presented to the Interdisciplinary Team for an eligibility determination.

Psychological Evaluation

8. Isis Jones, Psy.D., conducted a psychological evaluation of Claimant on June 23 (by telephone) and August 29, 2022 (in-person). The report was also signed by Jaqueline Cortez, Psy.D., Intake Specialist, and Melissa Magallanes, Psy. D., Psychological Associate. Dr. Jones administered the Adaptive Behavior Assessment System-3rd Edition; the Autism Diagnostic Interview, Revised; the Autism Spectrum Rating Scales; the Wechsler Nonverbal Scale of Ability, and conducted a clinical interview and made clinical observations.

9. During the assessment, Mother disclosed that Claimant has a wide range of vocabulary, adequate pronunciation, and conveys her wants and needs effectively but has difficulty maintaining conversations. Mother expressed concerns about Claimant's behavior issues, including throwing tantrums, hitting her siblings, yelling profanities, and threatening to urinate on herself if she does not get her way. Mother reported Claimant has fixated interests, repetitive behaviors, ritualistic tendencies, and restricted patterns of behavior.

10. Based on the Psychological Assessment, Dr. Jones concluded that the test results, coupled with a review of the records and reported symptomology, warrant a diagnosis of ASD, without accompanying intellectual impairment, and without accompanying language impairment.

11. Following the Psychological Assessment, Dr. Jones made several recommendations for further assessment due to her ASD diagnosis, including: further behavior assessment to determine if there is a need for behavioral intervention, and if so, the level of applied behavior analysis (ABA) and other evidence-based intervention recommended; a reevaluation in one to two years to determine if there were any

changes to Claimant's global functioning; an evaluation to determine Claimant's eligibility for special education services to address challenges that may affect her academic performance upon her enrollment in school; an evaluation by a speech pathologist to determine if speech therapy is necessary to address her articulation challenges; and an occupational therapy (OT) assessment to address Claimant's reactions to sensory input (e.g., sensory processing tendencies) and play participation. Dr. Jones also recommended Claimant receive social skills training to improve social skills and adaptive skills; that the findings of the psychological assessment be shared with Claimant's primary care physician; and Claimant's parents be provided information about support groups and other community services.

Testimony of Laurie McKnight Brown, Ph.D.

12. Laurie McKnight Brown, Ph.D., SCLARC's lead psychologist consultant, testified at the hearing. Dr. Brown is part of the multi-disciplinary team from the Regional Center and reviewed the entire record to determine Claimant's eligibility for regional center services. The team determined that although Claimant does have ASD, she is not substantially disabled because she does not have substantial deficits in three or more areas of life functioning. These areas include language, motor skills, cognition, learning, self-care, and self-direction.

13. Claimant has substantial deficits in self-direction (she demonstrates maladaptive behaviors) and has difficulty self-regulating (emotional/behavioral issues, trouble self-initiating, and social skills deficits.) However, Claimant did not demonstrate substantial deficits as to language, motor skills, cognition, learning, or self-care.

14. Dr. Brown suggested that Claimant obtain ABA services through her health insurance and request that the school district perform an assessment and prepare an Individualized Education Program (IEP) to ensure her needs are met. Dr. Brown stated that some children show improvement after receiving ABA services and increased opportunities for social interaction in school. She notes that Claimant may apply again for regional center services if she experiences significant functional limitations in additional areas of major life activity.

Mother's Testimony

15. Mother stated that she is concerned about Claimant and wants her to get the help she needs. Although Claimant has good speaking skills and mobility, Mother is concerned about her self-direction skills and her inappropriate behavior with others.

Autism Spectrum Disorder

16. The DSM-5 is a manual that lists the diagnostic criteria for various mental illnesses and developmental disabilities. Regional Center uses the DSM-5 diagnostic criteria in determining whether a person has a qualifying diagnosis of intellectual disability or ASD.

17. The DSM-5 criteria for a diagnosis of ASD are summarized as Criteria A through E, in pertinent part, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following: (1) Deficits in social-emotional reciprocity, (2) Deficits in nonverbal communicative behaviors used for

social interaction, and (3) Deficits in developing, maintaining, and understanding relationships.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) Stereotyped or repetitive motor movements, use of objects, or speech; (2) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) Highly restricted, fixated interests that are abnormal in intensity or focus; and (4) Hyper- or hyperactivity to sensory input or unusual interest in sensory aspects of the environment.

C. Symptoms must be present in the early developmental period.

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability or global developmental delay.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)
A state level fair hearing to determine the rights and obligations of the parties, if any,

is referred to as an appeal of the regional center's decision. Claimant properly and timely requested a fair hearing, and therefore jurisdiction for this case was established.

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him or her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits].) The standard of proof in this case is preponderance of the evidence. (Evid. Code, § 115.) Thus, Claimant has the burden of proving her eligibility for services under the Lanterman Act by a preponderance of the evidence.

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

"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. 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.

(Welf. & Inst. Code, § 4512, subd. (a)(1).)

4. Welfare and Institutions Code section 4643, subdivision (b), provides: "In determining if an individual meets the definition of developmental disability contained

in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources."

5. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, the individual must show that he or she has a "substantial disability."

6. "Substantial disability" means:

(a) 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

(b) 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.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

7. Capacity for independent living and Economic self-sufficiency are not considered for a minor.

8. California Code of Regulations, title 17, section 54002 defines the term "cognitive" as "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience."

9. Excluded from eligibility are handicapping conditions that are solely psychiatric disorders, learning disabilities and/or disorders solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c).) If a person's condition is *solely* caused by one or more of these three "handicapping conditions," the person is not entitled to eligibility. In addition to proving a "substantial disability," a person must show that his or her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category of eligibility is specified as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a).)

10. Claimant did not present any evidence Claimant has an intellectual disability, cerebral palsy, epilepsy or a condition closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability.

11. It was established by a preponderance of the evidence that Claimant has a "developmental disability" as defined under Welfare and Institutions Code section 4512 in that the evidence presented established that Claimant has ASD. However, she is not substantially disabled as a result of that diagnosis. While Claimant does have substantial deficits in self-direction, the evidence did not establish that she has substantial deficits in two additional areas of life functioning, including receptive and expressive language; learning; self-care; or mobility.

12. Based on the foregoing, it was not established by a preponderance of the evidence that claimant is eligible for regional center services at this time. (Factual Findings 1-17; Legal Conclusions 1-11.)

ORDER

Claimant's appeal is denied. Regional Center's determination that Claimant is not eligible for regional center services is affirmed.

DATE:

LAURIE PEARLMAN
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.