

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2023010721

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 6, 2023.

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

Claimant's Mother, who is Claimant's authorized representative, represented Claimant. Claimant was not present for the hearing. (Claimant and Mother are not identified by name to protect their privacy.) A Spanish interpreter assisted Mother at the hearing.

///

The administrative law judge heard testimony and received documentary evidence. The record was closed, and the matter was submitted for decision at the close of the hearing.

ISSUE

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

EVIDENCE RELIED ON

The administrative law judge relied on Exhibits 1 through 9 submitted by SCLARC and the testimony of SCLARC Psychologist Consultant Laurie McKnight Brown, Ph.D., and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is 28 years old. He seeks regional center services based on claims of autism spectrum disorder (ASD), intellectual disability (ID), or a condition similar to or requiring treatment similar to that required of individuals with ID (5th category).

2. Claimant was fully assessed and evaluated by an interdisciplinary assessment team at SCLARC (SCLARC team). The SCLARC team reviewed Claimant's Psychosocial Assessment, his psychological evaluation, his individual education plans

(IEPs) for 2004, 2010, 2011, and 2012, as well as his psychiatrist's notes. Based on its review, the SCLARC team denied Claimant's request for regional center services by letter dated November 16, 2022. (Exhibit 1, p. A8.)

3. On December 13, 2022, Mother, as Claimant's Authorized Representative, filed a Fair Hearing Request. (Exhibit 1, p. A5.) After several continuances, this hearing commenced.

Background

4. Claimant lives with his Mother, his fraternal twin brother, and his sister. He was born on August 11, 1995. He was healthy at birth and met all developmental milestones at the age-appropriate times. His medical history is unremarkable.

5. Claimant was determined to be eligible for special education support in 2004 under the category of Specific Learning Disability. His 2004 IEP indicates Claimant was working below grade level in all areas and had a severe discrepancy in the academic areas of written expression, basic reading skills, math reasoning, and reading comprehension. Claimant's school district determined the discrepancies were a result of visual processing and auditory processing deficits. (Exhibit 8, p. A166.) In making its determination, the district reported its psychologist had noted Claimant had cognitive abilities in the average range, his social and emotional status was good, and he got along well with adults and peers. However, Claimant's teachers indicated Claimant had difficulties staying on task in a classroom setting as well as difficulties recalling information, and he took a longer time to process grade-level work. (*Id.*, p. A165.)

6. Claimant also struggled with attention problems throughout his schooling. Mother told SCLARC during the intake process Claimant was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), although the details were not

made known at hearing. Claimant received special education support until his high school graduation.

7. Claimant graduated high school in 2013. Throughout high school, Claimant was independent in all dressing, personal hygiene, and grooming tasks. He and his brother held various summer jobs while attending high school. Claimant also played sports and held a driver's license.

8. At his senior prom held in 2013, Claimant overdosed on drugs and was hospitalized at Downey Hospital. After his discharge from the hospital, Claimant's behavior and emotions drastically changed. Claimant's family began to notice changes in 2016 when Claimant began experiencing paranoia. (Exhibit 4, p. A66.) In 2017, Claimant started receiving mental health services from Pacific Clinic because of his condition. However, Pacific Clinic terminated treatment after Claimant stopped taking his medication because it would make him too sleepy.

9. Without medication, Claimant's condition worsened. He used unintelligible and incoherent speech, stopped sleeping, took off his clothes, and started throwing water, mustard, and oil in the house. Claimant was hospitalized at UCLA Harbor Hospital for three days in 2018. On January 6, 2022, Claimant started hitting the walls, screaming, and was unable to calm down. Claimant was then hospitalized at UCLA Neuropsychiatric Institute (UCLA NPI) for nine days. At UCLA NPI, Claimant was diagnosed with undifferentiated schizophrenia and provided medication for the disorder.

10. The medication prescribed at UCLA NPI did not stabilize Claimant. In February 2022, Claimant started treatment at Masada Homes (Masada), where he continues to receive counseling, psychiatric care, and psychotropic medication.

According to Claimant's psychiatrist at Masada, Claimant's therapist reported Claimant has disorganized speech and "very severe mental health symptoms." (Exhibit 4, p. A49.) Claimant has a history of medication non-compliance and aggressive behaviors when agitated. Claimant gained significant weight as a result of his medication, and his food intake requires constant monitoring. He cannot leave the house without supervision. Mother has to assist Claimant with many of his daily living activities, including showering and dressing. Claimant continues to present with many unstable behaviors. Mother looks after Claimant 24 hours a day.

11. There is no history of developmental disabilities, mental illnesses, or hereditary disease in Claimant's family background.

Psychological Evaluation

12. On June 1 and June 22, 2022, Sammie Williams, PsyD., a clinical and forensic psychologist as well as a certified autism specialist, conducted a psychological evaluation of Claimant. As part of the psychological evaluation, Dr. Williams administered several psychological tests and reviewed Claimant's most recent IEP and the SCLARC Psychosocial Report. Dr. Williams also interviewed Claimant and Mother.

13. Dr. Williams observed that Claimant "was typically kind, receptive, cooperative, and typically engaged with constant redirections and guidance." (Exhibit 3, p. A28.) He noted Claimant is "a poor historian with very limited insight into his challenges." (*Ibid.*) Claimant's speech also "displayed notable deficits as he is often unaware when he becomes very soft-spoken or using simple and concrete responses during conversations." (*Ibid.*) Dr. Williams further observed that Claimant frequently "went off-topic while exerting random vocalization of trivial topics" and often was not aware of the nature of reciprocal conversation. (*Ibid.*) However, Claimant remained

cooperative and completed all tests and tasks asked of him with the frequent benefits of prompts. (*Ibid.*)

14. Dr. Williams administered the Weschler Adult Intelligence Scale – Fourth Edition (WAIS-IV) to assess Claimant’s intellectual as well as specific cognitive abilities. Claimant’s intellectual level of functioning based on the WAIS-IV fell in the “Extremely Low” range, with a Full-Scale Intelligence Quotient of 51, which is less than 99 percent of others his age. Claimant also scored in the “Extremely Low” range on tests within the Processing Speed Index, the Working Memory Index, and the Perceptual Reasoning Index, which measure the speed with which Claimant learned material presented visually, Claimant’s ability to hold information active in mind while attending to other tasks, and his ability to reason with nonverbal information, respectively. (Exhibit 3, p. A29.)

15. Dr. Williams administered the Adaptive Behavior Assessment System – Third Edition (ABAS-3) to assess Claimant’s performance of the day-to-day activities necessary to take care of himself and get along well with others. Mother completed the ABAS-3 rating form. Mother rated Claimant’s functional communication skills, academic skills, and ability to make independent choices, exhibit self-control, and take responsibility when appropriate as “Extremely Low.” Mother also reported Claimant’s leisure skills and ability to interact socially as “Extremely Low.” Additionally, Mother reported Claimant’s health and safety skills and Claimant’s ability to function at home and in the community as “Extremely Low.”

16. Dr. Williams also assessed Claimant for symptoms and behaviors consistent with possible ASD using the Social Responsiveness Scale, Second Edition (SRS-2), and the Autistic Diagnostic Interview–Revised (ADI-R). Mother completed both the SRS-2 and the ADI-R.

17. On the SRS-2, Mother rated Claimant as functioning within normal limits for social awareness and moderate in his social communication. She rated Claimant in the severe range in his motivation to engage in social-interpersonal behavior and the stereotypical behaviors or highly restricted interest's characteristic of ASD. Claimant's total social responsiveness score was also deemed severe, which Dr. Williams found to be consistent with his observations, as Claimant "has greatly struggled with social interactions due to his apparent low motivation, restricted interests, and poor social awareness and social cognition." (Exhibit 3, p. A31.)

18. Mother's responses to the ADI-R questionnaire showed Claimant does not consistently utilize direct gaze, is not always interested in others, and does not respond if someone approaches. His facial expressions are limited, and his appropriateness of social responses is poor. Although Claimant occasionally expresses his interests, he struggles to express his needs and does not effectively engage in reciprocal conversations if not discussing his own interests. Notwithstanding these issues, Claimant's scores on the ADI-R did not meet or exceed minimum cutoff scores indicating autism.

19. Based on Claimant's test results and Dr. William's observations and review of Claimant's psychiatric and education records, Dr. Williams diagnosed Claimant with "Intellectual Disability, Mild." (Exhibit 3, p. A42.) He found Claimant "struggles to integrate information that may be applied to day-to-day social situations, primarily when interacting with others." (*Ibid.*) He also found Claimant struggled "with internal emotional difficulties that may at times limit his abilities to implement appropriate coping mechanisms that could then allow him to implement effective decision-making skills when required." (*Ibid.*)

20. Dr. Williams recommended Claimant continue treatment with his primary clinician and psychiatrist, participate in individual adaptive therapy, and that his family continue monitoring Claimant. He noted Claimant has a "well-documented history of thought disturbances, anxiety levels, depressed moods, and attentional challenges that have historically manifested as unorganized, off-task, and easily distracted and tend to mimic other psychiatric disorders." (Exhibit 3, p. A32.)

Regional Center Testimony

21. Dr. Brown testified on behalf of SCLARC. Dr. Brown has been the lead psychologist consultant at SCLARC for six years and serves on the SCLARC team that determines whether an applicant is eligible for regional center services. In addition to Dr. Brown, the SCLARC team includes a physician, a program manager, and a nutritionist. Dr. Brown and the other SCLARC team members use the provisions of the Lanterman Act to assist them in determining whether an individual meets the eligibility criteria for regional center services.

22. Dr. Brown was involved in determining whether Claimant was eligible for regional center services. Along with the other members of the SCLARC team, she reviewed SCLARC's Psychosocial Report for Claimant, Claimant's psychological evaluation, Claimant's psychiatrist's notes, and Claimant's school records. Based on that review, Dr. Brown and the SCLARC team determined Claimant was not eligible for regional center services.

23. Dr. Brown explained the basis of the SCLARC team's decision at hearing. According to Dr. Brown, Claimant currently has mild ID and is substantially disabled. However, those conditions did not evidence themselves before Claimant was 18 years old. Dr. Brown asserted that Claimant's current cognitive problems result from his

schizophrenia, and not from a developmental disability. Additionally, the records showed Claimant had a typical teenage experience – he was involved in sports, worked during the summers, drove a car, and graduated from high school. However, it was not until after he overdosed at his senior prom that his behavior drastically changed.

24. Dr. Brown also averred that Claimant’s participation in special education was not indicative of ID. She pointed out that the District deemed Claimant eligible for special education based on the Specific Learning Disability category, and specifically based on his visual and auditory deficits. According to Dr. Brown, a learning disability reflects difficulty accessing one’s cognitive capacity; it does not signal an absence of cognitive capacity.

Mother’s Testimony

25. Mother is dedicated to the care of Claimant and is an effective advocate for his needs. She described Claimant’s difficulties in detail. Mother testified she needs help taking care of Claimant. She noted Claimant was not fully toilet-trained until he was four or five years old. She also reported as a child Claimant was distant, would not listen to his teachers, and had problems seeing and hearing. She always had to repeat things to make sure Claimant understood them.

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. (Welf. & Inst. Code (Code), §§ 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.

2. Claimant has the burden of establishing his eligibility for Lanterman Act services and supports by a preponderance of the evidence. (*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 (emphasis in original).)

Relevant Statutes and Regulations

3. To be eligible for Lanterman Act supports and services, Claimant must present with 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. 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. CCR section 54000 specifically excludes three conditions from the definition of "developmental disability." First, solely psychiatric disorders involving impaired intellectual or social functioning which originated as a result of the psychiatric disorders would not be considered developmental disabilities. "Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have been seriously impaired as an integral manifestation of the disorder." (CCR, § 54000, subd. (c)(1).)

6. Second, an individual would not be considered developmentally disabled if his only condition was a learning disability, "which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized intellectual disability, educational or psycho-social deprivation, [or] psychiatric disorder" (CCR, § 54000, subd. (c)(2).) Third, solely physical conditions, such as faulty development not associated with neurological impairment, which result in a need for treatment similar to that required for intellectual disability are also excluded.

7. For an individual with a developmental disability to qualify for regional center services, his developmental disability must also function as a "substantial disability." "Substantial disability" is a condition that "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." (CCR, § 54001, subd. (a)(1).) Additionally, an individual with a "substantial disability" must demonstrate "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 age of the person: [¶] (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6) Capacity for independent living. [¶] (7) Economic self-sufficiency." (CCR, § 54001, subd. (a)(2).)

Analysis

8. Claimant currently suffers from ID, a condition eligible for regional center services. There is insufficient evidence to establish he suffers from ASD. Claimant is also currently substantially disabled by his condition. He cannot care for himself, has receptive and expressive language deficits, lacks self-direction, and is not capable of independent living. Nor is he capable of economic self-sufficiency.

9. There is insufficient evidence to establish however that Claimant's current condition stems from a developmental disability originating before he was 18 years old. The evidence demonstrates Claimant attended school, held jobs, participated in sports, had social relationships, and drove a vehicle before he was 18. He was never diagnosed with an intellectual disability until after he was 18 years old. A learning disability does not constitute a developmental disability.

10. The evidence shows that Claimant suffers from a psychiatric condition, i.e., undifferentiated schizophrenia, which contributes to his cognitive difficulties and his poor adaptive skills. That psychiatric condition may have been triggered by a drug overdose at Claimant's senior prom. However, the condition did not become obvious

until after Claimant turned 18. Psychiatric disorders, even when intellectual capacity is impaired, are not considered a developmental disability.

11. In sum, Claimant has severe mental health problems. Those problems became evident after he was 18 years old. While those problems may adversely impact Claimant's cognitive, adaptive, and social functioning, those problems are not considered developmental disabilities under the Lanterman Act because they did not originate before Claimant was 18 and they are a result of a psychiatric disorder.

ORDER

Claimant's appeal is denied.

DATE:

CINDY F. FORMAN

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.

