

**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. 2023020747

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 25, 2023.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (Service Agency or NLACRC).

Claimant was represented by his mother (Mother). Claimant did not attend the hearing. Names are omitted to protect the privacy of claimant and his family. Mother used the services of a Spanish language interpreter.

The ALJ received oral and documentary evidence. The record closed and the matter was submitted for decision on April 25, 2023.

ISSUE

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

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 26, claimant's exhibits A through G, and the testimony of Mother and Sandy Fischer, Ph.D., NLACRC's clinical services supervisor.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 31 years old and lives with Mother. Mother seeks regional center services for claimant because she suspects he has autism or an intellectual disability.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On November 22, 2021, Mother submitted an intake application to Service Agency on behalf of claimant. Mother indicated she suspected claimant has an intellectual disability because he “has difficulty problem solving and communicating his needs.” She stated she applied for regional center services because “[claimant] needs some help. He has schizophrenia. [H]e needs some support[,] also he needs social skills.” (Ex. 5, p. A28.)

4. On January 27, 2022, Service Agency sent Mother a Notice of Proposed Action indicating claimant was ineligible for regional center services because he did not meet the criteria for a developmental disability under the Lanterman Act. (Ex. 6, p. A42.)

5. On March 4, 2022, Mother filed a Fair Hearing Request, asking for Service Agency to evaluate claimant for regional center service eligibility. After NLACRC’s Eligibility Determination Committee reviewed claimant’s mental health records and found no evidence of a qualifying developmental disability, Mother withdrew her Fair Hearing Request.

6. On February 8, 2023, Mother filed another Fair Hearing Request. Following an informal meeting with Mother on February 23, 2023, and a review of additional records provided by Mother, Service Agency again determined claimant was ineligible for regional center services. This hearing ensued.

Claimant’s Background

7. Claimant received general education instruction in elementary and middle school. In third grade, his teacher recognized him as a leader and as being considerate of others’ feelings. When he was in seventh grade, claimant’s grades began to decline, and he exhibited poor behavior at school. After slight improvement

in eighth grade, he failed all his courses in ninth grade and received almost all “unsatisfactory” ratings for his behavior. Around this time, claimant was hospitalized after purposely cutting himself and was diagnosed with a psychotic disorder.

8. When he was 15 years old, claimant was diagnosed with schizophrenia and suffered from persistent delusions and a thought disorder. He began abusing substances such as marijuana, cocaine, and methamphetamine. He has since been hospitalized multiple times for mental health reasons.

9. According to an Individualized Educational Plan (IEP) dated January 13, 2011, claimant was eligible for special education services due to emotional disturbance. He attended a nonpublic high school called Tobinworld and was observed to be a friendly, interactive student. (Ex. 13.) Claimant earned a high school diploma on June 23, 2011.

10. On February 27, 2017, Efrain A. Beliz, Jr., Ph.D. conducted a psychological evaluation of claimant, who was 24 years old at the time. Dr. Beliz’s written report indicates he reviewed claimant’s IEP records and noted “normal development until the age of 15” and no data to suggest an intellectual disability or autism. (Ex. 4, p. A23.) Claimant did not cooperate with the assessment, leaving Dr. Beliz with “no evidence available for review to support [intellectual disability] or [autism spectrum disorder.]” (Id.) Based on his evaluation, Dr. Beliz diagnosed claimant with schizophrenia.

Service Agency’s Denial of Eligibility

11. Sandi J. Fischer, Ph.D. testified at the hearing. Dr. Fischer is licensed as a psychologist in California. Dr. Fischer has been employed by NLACRC since 2011. She was a Staff Psychologist for NLACRC for six years and has been Co-Supervisor of NLACRC’s Clinical and Intake Departments since 2017.

12. Dr. Fischer reviewed claimant's academic, mental health, and medical records to determine whether the records supported claimant's eligibility for regional center services. Dr. Fischer utilized the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnostic criteria for intellectual disability and autism, and also considered the Association of Regional Center Agencies Guidelines for Determining 5th Category Eligibility for the California Regional Centers (ARCA Guidelines). (Ex. 23.) The ARCA Guidelines were developed in 2002.

13. Dr. Fischer testified that eligibility under the Lanterman Act requires a developmental disability that is attributable to one of five specified conditions. Two of the conditions, cerebral palsy and epilepsy, are medical conditions determined by medical doctors. The other three conditions, which are autism, intellectual disability, and fifth category, are determined by psychological testing and assessment. Solely psychiatric conditions do not qualify an individual for regional center services.

14. After reviewing hundreds of pages of records, Dr. Fischer concluded the records did not indicate claimant met the diagnostic criteria for autism spectrum disorder. She further concluded there was no indication claimant met the diagnostic criteria for intellectual disability or the "fifth category," which is discussed below. Dr. Fischer documented her findings in a report dated March 20, 2023. (Ex. 18.)

15. For adults seeking regional center services, Dr. Fischer testified it is important to review records to determine whether symptoms of autism or an intellectual disability were present during an individual's early developmental period and up through age 18. Claimant's records covered most of his childhood, though most were generated during adolescence rather than early childhood.

AUTISM

16. The essential features of autism spectrum disorder are (1) persistent impairment in reciprocal social communication and social interaction and (2) restricted, repetitive patterns of behavior, interests, or activities. These symptoms must be present from early childhood and limit or impair everyday functioning, and cannot be better explained by another condition, such as a mental health condition. (Ex. 20, p. A609.)

17. Dr. Fischer testified her records review did not support a diagnosis of autism for claimant. She stated an individual who functions well until adolescence and then declines is not consistent with autism because autism manifests during preschool years and continues throughout childhood. She further testified claimant's 2011 IEP was not consistent with autism because it described claimant as friendly and interactive. Individuals with autism experience difficulty understanding social norms. She also noted the IEP described claimant as wanting to be helpful, which requires a level of social reciprocity inconsistent with autism. None of claimant's mental health records contained a diagnosis of autism. Although a few of claimant's symptoms, such as a flat affect when speaking, are consistent with autism, they are attributable to his schizophrenia.

INTELLECTUAL DISABILITY

18. Intellectual developmental disorder, or intellectual disability, is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits. Intellectual functions include reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. These deficits must be confirmed both by clinical assessment and

individualized, standardized intelligence testing. Deficits in adaptive functioning must result in failure to meet developmental and social cultural standards for personal independence and social responsibility and limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community. (Ex. 21.)

19. Dr. Fischer testified her records review did not support a diagnosis of intellectual disability for claimant. Claimant's birth and developmental milestones were unremarkable, which Dr. Fischer testified is "unheard of" for a person with an intellectual disability, unless the person experienced a traumatic event during their developmental period. There is no evidence claimant experienced such an event. Dr. Fischer indicated claimant's educational records reflected deteriorating grades at times of his greatest mental health challenges and substance abuse, but when he was "more intact," testing, grades, and teacher reports indicated low average to average skills, which does not indicate an intellectual disability. (Ex. 18, p. A220–221.) None of claimant's mental health records contained a diagnosis of intellectual disability.

FIFTH CATEGORY

20. In addition to those with an intellectual disability, cerebral palsy, epilepsy, or autism, individuals may be eligible for regional center services if they have a condition closely related to an intellectual disability or one that requires treatment similar to that required for an intellectual disability, commonly referred to as the fifth category. To determine whether a person is eligible for regional center services under this fifth category, a regional center must consider the following: (1) whether the individual functions in a manner similar to that of a person with an intellectual disability, and (2) whether the individual requires treatment similar to that required by an individual who has an intellectual disability. (Ex. 23.)

21. Dr. Fischer testified her records review did not support fifth category eligibility for claimant. Although claimant's social and intellectual functioning are impaired, those impairments are attributable to his schizophrenia and substance abuse, rather than a condition similar to an intellectual disability. Dr. Fischer testified none of the records she reviewed indicated claimant suffers from a condition similar to an intellectual disability or required treatment similar to an intellectual disability.

Claimant's Evidence

22. Mother testified about the challenges she faces as claimant's caregiver. He cannot care for himself by performing tasks such as cooking meals. She described him as the equivalent of a 31-year-old child. He was a "very nice and playful kid" who was happy. Once he turned 15 years old, he began exhibiting symptoms of mental illness. He does not socialize with others and has trouble focusing. She believes he abused drugs to self-medicate.

23. Mother believes claimant has symptoms consistent with autism. Claimant participates in a Special Olympics program with individuals who are autistic or have Down syndrome. Mother feels claimant is very comfortable with these individuals and is happy around them, which supports her belief that claimant may have autism. Mother wants to ensure claimant receives the necessary services to prepare him to care for himself once she is unable to do so.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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 by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department of Developmental Services is the public agency responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Under the Lanterman Act, a developmental disability is 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.” A developmental disability includes intellectual disability, cerebral palsy, epilepsy, autism, and other conditions similar to intellectual disability or requiring treatment similar to that required by individuals with intellectual disability, i.e., the fifth category. (Welf. & Inst. Code, § 4512, subd. (a).)

5. Developmental disability shall not include handicapping conditions that are 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. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

Determination of Claimant’s Ineligibility for Services

6. Claimant did not establish by a preponderance of evidence he is eligible for regional center services. He has never been diagnosed with an intellectual disability, autism spectrum disorder, or a fifth category condition. He was found eligible for special education services in the eligibility category of emotional disturbance, and not because of autism or intellectual disability. His development was normal until the age of 15, when he was diagnosed with schizophrenia. His symptoms are consistent with a psychiatric disorder rather than an intellectual disability or autism spectrum disorder. A psychiatric disorder is not a qualifying condition that establishes eligibility to receive regional center services.

7. Because claimant has not been diagnosed with a developmental disability as defined by the Lanterman Act, he is not eligible for regional center services.

ORDER

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

DATE:

HARDEN SOOPER

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.