

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

In the Matter of:

Claimant,

vs.

South Central Los Angeles Regional Center,

Service Agency.

DDS No. CS0003662

OAH No. 2023030545

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 5 and June 10, 2024, at South Central Los Angeles Regional Center (Service Agency).

Tami Summerville, Appeals Manager, represented Service Agency.

Claimant's mother (Mother) represented claimant, who was also present at the hearing. Names are omitted to protect the privacy of claimant and his family. Mother was assisted by a Spanish language interpreter.

The ALJ received testimony and documentary evidence.

At the conclusion of the fair hearing on June 10, 2024, the ALJ determined a translation of claimant's Exhibit AA was necessary to render a final decision in this matter. The ALJ continued the hearing until June 12, 2024, to allow a certified interpreter to submit a copy of Exhibit AA, translated from Spanish into English. On June 11, 2024, the interpreter submitted an English translation of Exhibit AA, located on pages Z1 through Z7 in Case Center, which was admitted into evidence.

The record closed and the matter was submitted for decision on June 12, 2024.

ISSUE

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

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's Exhibits 1 through 17, claimant's Exhibits A through O and AA through GG, and the testimony of the following witnesses: Laurie McKnight Brown, Ph.D.; Silvia Gutierrez, Ph.D.; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 18 years old and lives with Mother.

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 January 27, 2023, Service Agency sent Mother a Notice of Proposed Action finding claimant ineligible for regional center services because claimant was not substantially disabled as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition similar to intellectual disability or requiring treatment similar to intellectual disability.

4. Mother timely filed a Fair Hearing Request, disputing Service Agency's eligibility determination.

Service Agency's Evaluation of Claimant's Eligibility for Services

5. On January 24, 2023, Service Agency's interdisciplinary eligibility team determined claimant was not eligible for regional center services because he was not substantially disabled as a result of autism, intellectual disability, cerebral palsy, epilepsy, or other conditions similar to intellectual disability. The team consisted of two psychologists, a physician, a Service Agency program manager, an education specialist, and a nutritionist. In making its determination, the eligibility team relied on a combination of Service Agency assessments of claimant and documents provided by claimant's family.

6. Dr. Brown, Service Agency's lead psychologist consultant, was a member of the eligibility team and testified regarding the team's findings.

CLAIMANT'S ASSESSMENTS BETWEEN 2008 AND 2022

7. Between 2008 and 2022, Service Agency assessed claimant for regional center service eligibility six times, each time concluding claimant was not eligible for services. A clinician also assessed claimant in 2016 in connection with his Individual Education Plan (IEP) through his school district. Most recently, Alyson Marx, Psy.D., completed a psychological assessment on October 25, 2022, and John Amador completed a psychosocial assessment on October 14, 2022. The eligibility team did not have access to all prior assessment reports, but Dr. Marx reviewed the assessments as part of her records review and summarized her findings in a report dated January 2, 2023. (Ex. 5.)

8. In April 2008, when claimant was two years, five months old, Victor C. Sanchez, Ph.D., diagnosed claimant with Disruptive Behavior Disorder. At the time, claimant received services from Service Agency through the Early Start program for children under three years old. Claimant qualified for Early Start services based on his early developmental delays. In his report, which claimant submitted as evidence in this matter, Dr. Sanchez did not document his use of any Autism Spectrum Disorder (ASD)-specific assessment tools, nor did he diagnose claimant with ASD. (Ex. FF.)

9. In February 2010, when claimant was four years, four months old, Ann L. Walker, Ph.D., diagnosed claimant with Oppositional Defiant Disorder and Communication Disorder Not Otherwise Specified. Dr. Walker found claimant did not meet diagnostic criteria for ASD. She administered the Autism Diagnostic Observation Schedule, second edition (ADOS-2) and Autism Diagnostic Interview – Revised (ADI-R), both of which yielded scores in the non-autistic range. In her report, which claimant submitted as evidence in this matter, Dr. Walker listed several examples of behavior exhibited by claimant which was inconsistent with ASD: his appropriate use of eye

contact; his ability to develop peer relationships, share his interests and enjoyment, and engage in brief reciprocal conversation; no significant delays in expressive or receptive language skills; age-appropriate interactive, imitative, and imaginary play; no restricted areas of interest; no unusual adherence to routine; and no preoccupation with parts of objects. (Ex. EE.)

10. In April 2014, when claimant was eight years, five months old, Dr. Thomas Carrillo diagnosed claimant with ASD, level I. Results of the Child Autism Rating Scales suggested mild-to-moderate autism. In support of his diagnosis, Dr. Carrillo cited claimant's inability to engage in reciprocal conversation, inadequate eye contact, diminished array of facial expressions, flat affect, difficulty maintaining peer relationships, repetitive motor mannerisms, inflexible adherence to routines, unreasonably intense interest in computer games, a high level of activity such as jumping, and hypersensitivity to sensory issues. Dr. Brown was not a member of the eligibility team in 2014, but testified the team concluded claimant was not substantially disabled by ASD and therefore was not eligible for regional center services despite his ASD diagnosis. (Ex. L.)

11. In July 2015, when claimant was nine years, nine months old, Roberto De Candia, Ph.D., diagnosed claimant with Attention-Deficit/Hyperactivity Disorder (ADHD), predominantly hyperactive-impulsive presentation. Dr. De Candia administered the ADOS-2 and concluded the results were not consistent with a diagnosis of ASD. (Ex. 3.)

12. In September 2016, when claimant was nine years, 11 months old, Paul Mancillas, Ph.D., diagnosed claimant with ADHD, combined presentation. Dr. Mancillas assessed claimant in connection with claimant's IEP through his school district. Dr. Mancillas concluded he would not diagnose claimant with ASD, "although I would

recognize that autistic-like features are present, by virtue of [claimant's ADHD]." (Ex. 10, p. A169.) Dr. Mancillas noted Mother's responses to the Autism Spectrum Rating Scale indicated all areas were very elevated and would meet the criteria for ASD, but this was not recognized during Dr. Mancillas's testing sessions. He explained symptoms of ADHD and disruptive behaviors can overlap with ASD symptoms. Claimant was eligible for an IEP under the category of Other Health Impairment, related to his ADHD, not due to an ASD diagnosis.

13. In August 2017, when claimant was 11 years, 10 months old, Yoselin Munoz, Psy.D., did not make a diagnosis of ASD, instead deferring a diagnosis because she had insufficient data to diagnose claimant. However, Dr. Munoz stated claimant's presentation was better supported by the diagnosis of ADHD. (Ex. 4.)

14. In October 2022, when claimant was 17 years old, Dr. Marx diagnosed claimant with ADHD, combined type. She concluded claimant did not meet the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for ASD. In her report, Dr. Marx wrote, "There are clear concerns regarding [claimant]'s independent living skills, his ability to apply himself academically, and emotional and behavioral dysregulation at home that escalates to aggression." (Ex. 5, p. A67.) Dr. Marx also noted claimant "clearly requires academic and therapeutic support in order to manage his emotions, and tasks of daily life" but "the route of [claimant]'s difficulties does not, in this examiner's clinical opinion, appear to be related to ASD." (*Id.*, at p. A68.) Dr. Marx noted Mother's responses to a questionnaire regarding claimant's adaptive functioning suggested significant deficiencies in claimant's skills in all areas. Dr. Marx wrote, "Scores at this level are more expected for an individual with an intellectual disorder, and they may be an underrepresentation of [claimant]'s skills." (*Ibid.*)

15. Dr. Marx opined claimant is a “twice-exceptional” adolescent and student because two major aspects of his cognitive functioning diverge from a typical child and student. Claimant has exceptional or “gifted” level intellectual skills in some areas but not others. He also has a diagnosis of ADHD, a neurodevelopmental disorder. ADHD is linked with deficits in executive functioning. Such deficits typically negatively impact one’s ability to initiate and organize their attention and goal-directed behavior, persist in their efforts, and generally manage their behavior and emotions to effectively take on tasks of daily life.

16. Dr. Marx explained twice-exceptional children tend to have unique challenges as compared to other children, including delays in social skills, difficulty with friendships and social interactions, discrepancies between results of formalized testing and academic performance, and becoming hyper-focused in areas of interest in which their skills are particularly strong. Twice-exceptional students require specific types of academic accommodations and supports. They also benefit from therapeutic treatment and assistance with independent living skills.

2023 ASSESSMENTS AND INFORMATION

17. In April and May 2023, when claimant was 17 years, seven months old, Bhaktidevi Rawal, M.A., diagnosed claimant with ASD and ADHD, combined type. Mr. Rawal completed his assessment in connection with Children’s Hospital Los Angeles (CHLA). The ASD diagnosis was without accompanying intellectual impairment or language impairment and was associated with another neurodevelopmental disorder, namely ADHD. To support his ASD diagnosis, Mr. Rawal cited claimant’s persistent deficits in social-emotional reciprocity; nonverbal communicative behaviors; deficits in developing, maintaining, and understanding relationships; and restricted, repetitive patterns of behavior and interests. (Ex. 6, p. A86.) Dr. Brown testified the eligibility

team considered the 2023 CHLA assessment and noted the ASD diagnosis, but the assessment report did not indicate whether Mr. Rawal performed a records review and did not include claimant's ADOS-2 scores, both of which caused the eligibility team to give the diagnosis less weight when determining whether claimant was eligible for regional center services.

18. In letters dated August 23, 2022, July 25, 2023, and November 7, 2023, and in her testimony at the hearing, Silvia Gutierrez, Ph.D., described her observations of claimant after serving as his therapist for the past five years. Dr. Gutierrez has been a licensed psychologist for approximately 24 years and specializes in working with children with ADHD and ASD. Dr. Gutierrez noted claimant is very intelligent and she believes he can use his intelligence to mask other difficulties. Dr. Gutierrez did not assess claimant for ASD but believes he has both ASD and ADHD. She described his struggles with self-care, self-direction, impulse control, hyperfocus, social anxiety, and social communication. She acknowledged claimant can function independently, but believes he needs significant supports to do so. She further acknowledged claimant's symptoms can be attributed to ADHD, but she opined his symptoms are "above and beyond" those associated with ADHD alone.

19. In her testimony at the hearing, Mother described concerns about claimant consistent with her previous reports to the clinicians who assessed claimant throughout his childhood. Mother described claimant as experiencing significant challenges with self-care, organization, performance in school, social anxiety in group settings, communication with teachers, and transitions while at school. Mother asserted claimant needs a coach to help him stay organized at school and outside of school and believes Service Agency can provide such a service.

SUBSTANTIAL DISABILITY ANALYSIS

20. Dr. Brown testified the eligibility team reviewed all available documentation regarding claimant's condition and concluded the record did not support a diagnosis of ASD that was substantially disabling. The eligibility team found claimant was substantially disabled in the area of self-direction, but not in any of the other six areas considered, as described below.

21. The Association of Regional Center Agencies (ARCA) set forth definitions and guidelines for regional centers to consider when determining whether an individual is substantially disabled. (Ex. 17.) Dr. Brown testified the eligibility team considered the ARCA guidelines.

Mobility

22. According to ARCA guidelines, an individual is substantially disabled in the area of mobility if they have significant limitations with independent ambulation, including needing crutches, a walker, or a wheelchair, or if they have gait abnormalities and/or coordination problems that significantly interfere with mobility.

23. The eligibility team concluded claimant was not substantially disabled in the area of mobility, as he is able to walk and move around without assistance. The assessments did not indicate physical impairments consistent with substantial disability in the area of mobility. When he was younger, claimant had issues with a gait abnormality called "tip-toe walking," but those issues have since resolved. Claimant participated in track and field during high school.

Receptive and Expressive Language

24. According to ARCA guidelines, an individual is substantially disabled in the area of receptive and expressive language if they have significant limitations in both the comprehension and expression of verbal and/or nonverbal communication, resulting in functional impairments. An individual must be impaired in both receptive and expressive language to consider this an area of substantial disability.

25. The eligibility team concluded claimant was not substantially disabled in the area of receptive and expressive language, as claimant has not been diagnosed with a language disorder and his school records did not show any speech and language therapy. In April 2017, when claimant was 11 years, five months old, occupational therapist Amanda Nabayan assessed claimant in connection with his school district to determine his occupational therapy needs. In her report, Ms. Nabayan wrote, "at this time, [claimant]'s social participation skills appear to be appropriate for school participation and access." (Ex. 7, p. A102.) Specifically, Ms. Nabayan found claimant could follow directions and hold a reciprocal conversation with adults and peers.

Learning

26. According to ARCA guidelines, an individual is substantially disabled in the area of learning if they are substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention.

27. The eligibility team concluded claimant was not substantially disabled in the area of learning because his cognitive scores have consistently been in the high average to superior range.

Self-Care

28. According to ARCA guidelines, an individual is substantially disabled in the area of self-care if they have significant limitations in the ability to acquire and perform basic self-care skills, such as personal hygiene, grooming, and feeding.

29. The eligibility team concluded claimant was not substantially disabled in the area of self-care because claimant's scores on adaptive functioning measures have consistently been within the borderline to low range. Borderline falls between average and low. Dr. Brown testified claimant can complete self-care tasks, such as those related to hygiene, with reminders. In her 2017 occupational therapy assessment, Ms. Nabayan found claimant could access his gym locker, change clothes for physical education, manage his backpack and jacket, navigate the lunch line, throw away his trash, and use the restroom independently. She concluded claimant was able to manage his self-care needs at school without additional supports. (Ex. 7, p. A101–102.)

Self-Direction

30. According to ARCA guidelines, an individual is substantially disabled in the area of self-direction if they have significant impairment in the ability to make and apply personal and social judgments and decisions. Self-direction includes an individual's emotional development, interpersonal relationships, and interpersonal judgment.

31. The eligibility team concluded claimant was substantially disabled in the area of self-direction based on claimant's deficiencies in regulating his emotions and behavior and with interpersonal relationships. Mother testified claimant has difficulty socializing in group settings and communicating with teachers when he is not comfortable with the teacher, both of which fall under the category of self-direction,

according to Dr. Brown's testimony. Mother and Dr. Gutierrez both testified claimant has difficulty managing his emotions when he is angry or frustrated.

Capacity for Independent Living

32. According to ARCA guidelines, an individual is substantially disabled in the area of capacity for independent living if they are unable to perform age-appropriate independent living skills without the assistance of another person. Independent living skills include simple household tasks, multiple-step domestic activities such as cooking meals and doing laundry, safety awareness, money management, and taking basic steps necessary to obtain appropriate health care.

33. The eligibility team concluded claimant was not substantially disabled in the area of capacity for independent living because he is able to navigate the community safely and complete tasks such as cooking simple meals. Claimant attends California State University, Los Angeles, where he attends classes and lives in a dorm independently. He participated in track and band in high school. He exhibits safe pedestrian skills. Although claimant's records documented concerns about his ability to manage his finances and keep himself organized, Dr. Brown testified those concerns did not rise to the level of substantial disability in this area.

Economic Self-Sufficiency

34. According to ARCA guidelines, an individual is substantially disabled in the area of economic self-sufficiency if they lack the capacity to participate in vocational training or to obtain and maintain employment without significant support.

35. The eligibility team concluded claimant was not substantially disabled in the area of economic self-sufficiency, as claimant attends college and articulated a

clear career plan in consultation with the California Department of Rehabilitation. Dr. Brown testified claimant demonstrated he understands what it takes to finish college and pursue a career. He also has the cognitive ability to achieve those goals. Claimant has not yet attempted to obtain and maintain employment.

CLAIMANT'S OTHER DIAGNOSES

36. As described by several clinicians who assessed claimant, Dr. Brown testified claimant's deficits, particularly in executive functioning and self-regulation, can be attributed to his ADHD or his other diagnoses of Disruptive Behavior Disorder and Oppositional Defiant Disorder. Likewise, claimant's struggles with academic achievement, despite his superior cognitive abilities, are attributable to ADHD because inattention and disorganization negatively impact academic performance.

Analysis

37. Claimant did not prove by a preponderance of evidence he is substantially disabled as a result of autism, intellectual disability, cerebral palsy, epilepsy, or other conditions similar to intellectual disability or requiring treatment similar to intellectual disability. The evidence did not establish claimant has a condition qualifying him for regional center services or that such a condition renders him substantially disabled, as defined by the Lanterman Act.

38. Clinicians did not agree on whether claimant has ASD. Between 2008 and 2023, eight clinicians assessed claimant. Two of the eight diagnosed claimant with ASD. Four clinicians diagnosed claimant with ADHD and another clinician deferred any diagnosis of claimant but stated claimant's presentation was better supported by the diagnosis of ADHD. Four clinicians found claimant did not meet the criteria for an ASD diagnosis. One clinician diagnosed claimant with Disruptive Behavior Disorder and

another clinician diagnosed him with Oppositional Defiant Disorder. The totality of the evidence did not prove claimant has ASD, given the disagreement of clinicians over the course of many years. There was no evidence claimant suffers from intellectual disability, cerebral palsy, epilepsy, or another condition similar to intellectual disability or requiring treatment similar to intellectual disability.

39. Even if claimant had ASD, the evidence proved he is substantially disabled in only one of seven areas set forth by the Lanterman Act. Dr. Brown testified the eligibility team concluded claimant was substantially disabled only in the area of self-direction. Although deficits in self-direction may overlap with other areas, such as self-care or capacity for independent living, the eligibility team concluded claimant was not substantially disabled in those areas. Claimant's evidence to the contrary, largely the testimony of Mother and Dr. Gutierrez, did not outweigh Service Agency's evidence.

40. Even if claimant were substantially disabled in three or more areas, as required by the Lanterman Act, claimant's deficits are attributable to ADHD. Multiple clinicians diagnosed claimant with ADHD. As explained by Dr. Marx, individuals with ADHD experience deficits in executive functioning, which typically negatively impacts one's ability to initiate and organize their attention and goal-directed behavior, persist in their efforts, and generally manage their behavior and emotions to effectively take on tasks of daily life.

41. Mother testified credibly about her desire to obtain services for claimant and provide him with the best possible opportunity to succeed. She testified credibly about the struggles both she and claimant endured. Her advocacy for her son is admirable. However, given claimant's complex diagnostic history, the evidence did not prove claimant is eligible for regional center services.

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 because of the psychiatric disorder or treatment given for such a disorder. Developmental disability also shall not include handicapping conditions that are solely learning disabilities which manifest as a significant discrepancy between estimated cognitive potential and actual level of educational performance. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1) & (2).)

6. “Substantial disability” means the existence of 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: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (f)(1).)

Determination of Claimant’s Eligibility for Services

7. Claimant did not prove by a preponderance of evidence he is substantially disabled as a result of autism, intellectual disability, cerebral palsy, epilepsy, or other conditions similar to intellectual disability or requiring treatment similar to intellectual disability. The evidence did not establish claimant has a condition qualifying him for regional center services or that such a condition renders him

substantially disabled, as described in Factual Findings 37 through 41. Claimant is therefore not eligible for regional center services, pursuant to Welfare and Institutions Code section 4512.

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.