

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

In the Matter of:

CLAIMANT,

v.

CENTRAL VALLEY REGIONAL CENTER

OAH No. 2023030708

DECISION

Jessica Wall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 17, 2023, from Sacramento, California.

Claimant's mother represented claimant.

Jacqui Molinet, Appeals and Compliance Coordinator, and Amy McMahon, Legal Services Manager, represented Central Valley Regional Center (CVRC).

Evidence was submitted, the record closed, and the matter submitted on April 17, 2023.

ISSUE

Should CVRC add cerebral palsy and epilepsy to claimant's list of qualifying developmental disabilities (qualifying disabilities)?

FACTUAL FINDINGS

Background

1. Claimant is 17 years old. She began receiving CVRC early intervention services at eight months old because of an orthopedic impairment.
2. When she was three years old, claimant was diagnosed with Angelman Syndrome, a rare genetic disorder that can cause delayed development, movement or balance disorder, speech impairment, seizures,¹ and intellectual disability. CVRC later found that claimant has lifetime eligibility under the Lanterman Act because of the intellectual disability caused by her Angelman Syndrome. Her functional limitations, as noted in an October 2022 CVRC case record, are self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. She is non-verbal.

¹ According to the Angelman Syndrome Foundation, around 85 to 90 percent of children with Angelman Syndrome develop a seizure disorder by age three.

Prior Diagnoses, Medical Records, and Eligibility Requests

3. On April 4, 2009, Lynne M. Bird, M.D., wrote an unaddressed letter stating that claimant “has ataxic cerebral palsy as a consequence of Angelman syndrome.” She wrote that “[s]evere balance difficulties ... are a feature of this syndrome,” as are tremors, fine and oral motor difficulties, and severe speech delays and language disorders.

4. In May 2014, Michael Gage, M.D., conducted an electroencephalogram (EEG) test on claimant. Claimant’s mother’s reported claimant’s seizures began at six months and she had been on a prescription anticonvulsant for two years. He found that claimant had abnormal results, which were “not inconsistent with Angelman’s syndrome.” In August 2019, claimant underwent further EEG testing. Steven Ehrreich, M.D., found her results were “very mildly abnormal” and “could be associated with seizure tendency of the generalized type, or focal epilepsy with rapid bilateral spread.”

5. In March 2018, claimant had an appointment with nurse practitioner Lauren Bradley. Her medical problems included abnormal gait, lower limb spasticity, Angelman Syndrome, and epilepsy. Her past medical history included developmental delay, the presence of a genetic condition, and seizures.

6. Claimant’s mother emailed CVRC in January 2020, seeking expedited evaluation of an autism spectrum disorder (ASD) diagnosis for claimant. A CVRC staff member responded that claimant’s psychological evaluation had been completed 10 years earlier. CVRC declined to conduct additional eligibility determinations because claimant already had lifetime eligibility for regional center services based on her intellectual disability.

Request to Update Qualifying Disabilities

7. Around November 9, 2022, claimant's mother requested CVRC add cerebral palsy and epilepsy to claimant's qualifying disabilities. Specifically, she asked CVRC to list them on claimant's Client Development Evaluation Report (CDER). The CDER is a confidential document that the Department of Developmental Services (DDS) uses. The CDER lists the diagnostic and evaluation information for each regional center client. A regional center updates the CDER at a client's Individualized Program Plan (IPP) meeting.

8. Claimant's October 2022 CDER lists several of her developmental disabilities. The CDER does not detail which disabilities make claimant eligible for services from the regional center. On the first page, the CDER has a heading titled, "Developmental Disabilities." It states claimant has an intellectual disability caused by chromosomal deletions and epilepsy. It states "none" for cerebral palsy and ASD. Under "Other Disabilities / Health Conditions," it lists other medical conditions affecting claimant's eyes, digestive system, feet, and spine. On the second page, the CDER states that claimant is on a special diet and uses orthopedic braces or splints. Under "Skill Development," the CDER details claimant's functional limitations.

9. On November 28, 2022, CVRC contracted Becky Kawashima, M.D., to review claimant's medical records for the request. Dr. Kawashima determined from the records that claimant's seizures were stable. She concluded that claimant's intellectual disability is the primary condition that renders her substantially disabled and thus eligible for regional center services.

10. CVRC also maintains a Diagnostic Sheet for each client. Claimant's Diagnostic Sheet lists her qualifying disability is "Intellectual Disability, Unspecified,"

caused by Angelman Syndrome. On December 20, 2022, CVRC updated claimant's sheet. The update added ASD as a qualifying disability after claimant's August 2022 evaluation with a psychologist. The sheet states claimant is substantially handicapped in communication skills, capacity for independent living, learning, self-direction, economic self-sufficiency, and self-care. It does not list a mobility impairment. The sheet also lists claimant's other medical conditions, including seizures.

11. Claimant's mother filed a complaint with DDS on January 14, 2023. The complaint alleged that CVRC violated claimant's rights because it found that claimant's cerebral palsy and epilepsy were not qualifying disabilities.

12. On February 13, 2023, CVRC sent claimant a Notice of Proposed Action. The proposed action denied the request to add cerebral palsy and epilepsy as eligible conditions. It stated claimant had not provided new information supporting her diagnosis of cerebral palsy. It added that her epilepsy was already listed as a medical condition. CVRC determined that there was "not enough information to prove a substantial disability occurred" because of claimant's cerebral palsy or epilepsy. Claimant's mother filed a Fair Hearing request on March 1, 2023.

NEW MEDICAL RECORDS

13. At hearing, claimant's mother presented several new medical documents² she had not previously shared with CVRC. The first was an October 2019 Medical

² Claimant's mother was allowed to present previously undisclosed documentary evidence at the time of hearing under Welfare and Institutions Code section 4712, subdivision (d)(2). She was also allowed to call a witness that she failed to timely disclose under Welfare and Institutions Code section 4712, subdivision (d)(4).

Therapy Clinic Narrative by Elinor M. Zorn, M.D. Dr. Zorn listed claimant's diagnoses as ataxic cerebral palsy and Angelman Syndrome. She described claimant's condition as stable. She explained that she is dependent on others for all activities of daily living. While she mentioned that claimant has seizures and is ataxic,³ her impression was that claimant had Angelman Syndrome.

14. The second new document was a March 2023 letter from Timothy Foster, M.D. He wrote claimant has "intractable symptomatic generalized epilepsy and neurodevelopmental disabilities secondary to Angelman Syndrome." He stated that claimant's epilepsy "impacts her significantly with self[-]care, vision, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency, social and community integration." Dr. Foster did not explain how claimant's epilepsy impacts her in these areas. No medical records of Dr. Foster's examinations of claimant were provided with the letter to show how he arrived at his conclusions.

Testimony of Becky Kawashima, M.D.

15. Dr. Kawashima is a board-certified pediatrician. She has worked with CVRC for about 20 years as a medical consultant. She specializes in eligibility and early intervention cases. In each eligibility determination, Dr. Kawashima works to be objective and consistent. She does not make decisions based on sympathy. Instead, she relies on objective medical evidence. This makes CVRC's decisions transparent and similar to other California regional centers.

³ Ataxia is the presence of abnormal, uncoordinated movements.

16. Dr. Kawashima relies solely on the preexisting medical records and does not perform an examination or make new diagnoses. She assesses each person individually because each potential client is unique. Many clients have multiple medical conditions, but that does not make every medical condition a qualifying disability.

17. Here, CVRC asked Dr. Kawashima to reconsider claimant's qualifying disabilities in November 2022. She reviewed GeneReviews, part of the National Institute of Health's library. GeneReviews stated Angelman Syndrome can cause severe developmental delay or intellectual disability, severe speech impairment, and gait ataxia. It also stated that seizures are common in individuals with Angelman Syndrome. Dr. Kawashima reviewed the 2009 letter from Dr. Bird. She found it difficult to give the letter weight because it did not include any clinical notes, such as details from office visits or medical tests.

18. At the hearing, Dr. Kawashima reviewed the November 2019 clinic notes from Dr. Zorn for the first time. This record included physical examination notes. Dr. Kawashima said that CVRC could now add cerebral palsy as a medical condition to claimant's Diagnostic Sheet. Claimant's cerebral palsy still would not constitute a qualifying disability, however. The record did not state that claimant's cerebral palsy, rather than her Angelman Syndrome, caused significant limitations in at least three major life activities.

19. Dr. Kawashima also reviewed the March 2023 letter from Dr. Foster for the first time at the hearing. She explained that the letter itself was insufficient to change claimant's qualifying disabilities because it lacked any clinical notes.

20. Dr. Kawashima agrees that claimant has cerebral palsy and epilepsy diagnoses. Nevertheless, she does not consider these conditions to be qualifying

disabilities. This is because there is no medical evidence that each condition, on its own, significantly limits claimant in at least three major life activities. Claimant's Angelman Syndrome causes her muscle coordination issues and seizure disorder, so it would be inconsistent with CVRC's interpretation of the law to list them as independent qualifiers for eligibility. Dr. Kawashima cannot make an exception to the law because a client's family requests it.

Testimony of Amy McMahon

21. Amy McMahon works as CVRC's Legal Services Manager. She explained that once a client is eligible for CVRC services, CVRC will work to meet the person's needs and supply services. Having more qualifying disabilities does not entitle a client to any more services or funding. CVRC first works to determine if generic resources are available to meet a client's needs. If not, then CVRC funds every need CVRC is legally allowed to fund.

22. Claimant currently receives the highest level of support that CVRC provides. CVRC will continue to provide her services, even if cerebral palsy and epilepsy are listed as medical conditions, rather than qualifying disabilities. Claimant is entitled to services for the rest of her life.

Testimony of Claimant's Mother

23. Claimant's mother explained that claimant's cerebral palsy limits her mobility. She needs others to help her into orthotics and adjust her feet. She is also unable to walk distances and stand for long periods, which her mother believes limits her ability to work and economically support herself. Claimant lacks the motor skills to toilet independently. Based on all her limitations, claimant is unable to complete most activities of daily living at the level of the average 17-year-old.

24. Claimant is currently on two medications for her seizure disorder: clobazam and a cannabidiol-based (CBD-based) medication. To qualify for the CBD-based medication, three other anticonvulsant medications must fail. Claimant's mother interprets this as meaning that claimant's epilepsy is severe.

25. Claimant's mother loves claimant. She worries about claimant's future care as her parents age. She believes that changing the CDER will help protect claimant by keeping her care consistent as her CVRC caseworkers change. She also thinks hospitals will use the CDER when treating claimant. She did not know how a hospital would get the confidential CDER. Further, she could not explain why a hospital would use a DDS document instead of consulting with claimant's parents or conservators.

26. Claimant's mother argued that CVRC's decision not to list cerebral palsy and epilepsy on the CDER was detrimental to claimant. When shown that epilepsy was already listed on claimant's CDER, she asserted the listing was insufficient unless epilepsy was also one of claimant's qualifying disabilities. She also argued that the CDER is incorrect because it states claimant's epilepsy is mild. Further, she argued an additional issue not listed on her Fair Hearing request. She alleged the CDER is inaccurate because it did not list claimant's ASD diagnosis.

27. Claimant's mother mentioned that CVRC previously refused to buy a treadmill for claimant. She believes a treadmill would help claimant's mobility. She thinks the denial was because cerebral palsy and epilepsy were not listed as claimant's qualifying disabilities. She did not provide evidence about when she made this request, the exact reasons CVRC gave for denying it, or whether she sought to appeal the denial.

28. Claimant's mother believes that other CVRC clients receive more services and support. Specifically, she thinks that white clients receive services her daughter does not. She provided one example. A pharmacy employee told her that CVRC clients get free toothbrushes, and claimant only received one free toothbrush. Initially, claimant's mother stated that claimant did not receive services from CVRC during the pandemic. Upon further questioning, she agreed that claimant received services once she requested them. Claimant had not received services she had not requested.

Testimony from Claimant's Witnesses

29. Claimant's mother called three witnesses in support of her appeal. Dustlyne Beavers previously worked as a service coordinator at Kern Regional Center. Currently, she is a self-determination consultant and independent facilitator. She testified about the importance of the CDER. She said it provides a baseline of the client's status for the year. It also helps develop the client's future goals for independent living at the IPP meeting.

30. Michael Bowers worked in the regional center system for over 32 years. He was a service coordinator, supervisor, and branch manager in Southern California branches. In 2019, he retired. Currently, he works as a self-determination consultant and independent facilitator. He testified about the importance of listing conditions prominently on the CDER. That helps direct a client to services.

31. Paula Stimson is a friend of claimant's mother. Ms. Stimson's child also has Angelman Syndrome and receives services from a regional center. Her child was first found to be eligible for services based on epilepsy at one year old. At 2.5 years old, her child was also found to be eligible for services because of an intellectual

disability caused by Angelman Syndrome. Her regional center made these eligibility determinations after Ms. Stimson submitted medical records about each condition.

Analysis

32. Parents do not make the decision about whether their child's medical condition causes a substantial disability. The law assigns that task to regional center staff, physicians, and psychologists. (Cal. Code Regs., tit. 17, § 54001, subd. (b).) Here, there is no dispute that claimant has ataxic cerebral palsy and epilepsy diagnoses. The question is whether each of these two conditions is a "substantial disability" and significantly limits claimant in at least three major life activities, independent of her Angelman Syndrome. Based on the medical evidence provided at the hearing, the answer is no.

33. The medical records support Dr. Kawashima's conclusion. Claimant's cerebral palsy and epilepsy are secondary to her primary qualifying disability, Angelman Syndrome. Claimant is substantially limited in most areas of daily life based on her Angelman Syndrome. No record assessed her limitations based solely on cerebral palsy or epilepsy.

34. Drs. Bird's and Foster's letters were conclusory. The letters lacked clinical notes about why each condition caused significant limitations to major life activities. Moreover, CVRC did not have several medical records at the time of the Notice of Proposed Action. CVRC could not have made a decision based on medical records that were not provided.

35. Claimant's mother has multiple complaints about the accuracy of the CDER. The records unambiguously show that the CDER listed claimant's epilepsy in October 2022, prior to claimant's hearing request. Claimant's mother believes her

daughter's epilepsy condition to be severe. Yet the records reflect claimant's "very mildly abnormal" EEG result and stable condition as of 2019. Moreover, Dr. Kawashima agreed that the new medical records provided at the hearing are sufficient to list claimant's cerebral palsy as a medical condition. While claimant's ASD diagnosis was not listed on the October 2022 CDER, that is only because it was not added until December 2022. Critically, claimant is already eligible for and will continue receiving services from CVRC for the rest of her life.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Claimants have the burden of proving that they have a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means proving that something is more likely to be true than not true. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (the Act). (Welf. & Inst. Code, § 4500, et seq.) "The Act seeks to integrate developmentally disabled Californians into mainstream life and to ensure they are accorded equal access to programs receiving state funds." (*Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; see also Welf. & Inst. Code, §§ 4501, 4502.)

3. Applicants are eligible for services under the Act if they suffer from at least one substantial developmental disability based on intellectual disability, cerebral palsy, epilepsy, ASD, or "the fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category is a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability. (*Ibid.*) A qualifying condition must start before the age of 18, continue indefinitely, and constitute a "substantial disability." (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (b).)

4. Regulations define a "substantial disability" as:

(1) 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

(2) 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).)

5. The "substantial disability" assessment "shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client," including a program coordinator, a physician, and a psychologist. (Cal. Code Regs., tit. 17, § 54001, subd. (b).) After receiving consent, that group consults with potential clients and other relevant parties. (*Id.*, at subd. (c).)

6. As set forth in the Factual Findings as a whole, claimant did not show that her cerebral palsy and epilepsy are qualifying disabilities. She did not provide evidence that shows these conditions independently cause her significant functional limitations in at least three or more major life activities. This decision does not impact her preexisting eligibility for CVRC services. She will continue receiving CVRC services and support for the rest of her life.

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ORDER

Claimant's appeal is DENIED.

DATE: April 19, 2023

JESSICA WALL

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.

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

In the Matter of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency.

OAH No. 2023030708

ORDER ON APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in this matter on April 19, 2023. On April 24, 2023, claimant applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713. The application for reconsideration was timely submitted. Claimant was informed that in the future, she must notify both the Regional Center and the Department of Developmental Services (DDS) if she files any requests for reconsideration. The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

A party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). Here, claimant seeks reconsideration on a claimed

error of fact. Specifically, claimant states the grounds on which the application is made as follows: Claimant's Client Development Evaluation Report (CDER) from April 2023 should be consistent with the CDER from October 2022, which would include epilepsy and cerebral palsy as "developmental disabilities" that are claimant's basis for eligibility under the Lanterman Act. She also requests to add Autism Spectrum Disorder (ASD) to the CDER.

On May 5, 2023, Central Valley Regional Center (CVRC) filed a written statement opposing the application because epilepsy is already listed on the CDER as a medical condition. CVRC stated in its response that the CDER will be updated to include cerebral palsy as a medical condition. Regarding ASD, the issue was not raised at hearing.

ANALYSIS

Claimant requested reconsideration to add epilepsy and cerebral palsy as developmental disabilities on the 2023 CDER to make it consistent with the 2022 CDER. Claimant also requested to add ASD to the CDER. The issue at the fair hearing was whether epilepsy and cerebral palsy should be included in the list of claimant's "developmental disabilities," which are the bases for her regional center eligibility. The outcome at hearing was that epilepsy and cerebral palsy are medical conditions claimant has, but not qualifying conditions.

While epilepsy is currently listed as a medical condition, it is not listed as a developmental disability. In its response to the request for reconsideration, CVRC agreed to add cerebral palsy to claimant's medical conditions. The evidence presented at hearing did not support claimant's request to add these conditions as qualifying

conditions for eligibility. There was no dispute that claimant is eligible for regional center services based on Angelman Syndrome and will be eligible for her lifetime.

The issue of whether claimant's ASD is a medical condition or qualifying condition was not listed as an issue in claimant's fair hearing request or in the decision. The request for reconsideration and any order in response is limited to the issues addressed at hearing and in the hearing officer's decision. Consequently, no ruling on ASD can be made here.

For these reasons, the application for reconsideration must be denied, except to the extent CVRC agreed independently to ensure claimant's medical history is correct on the CDER.

ORDER

The application for reconsideration is DENIED.

DATE: May 9, 2023

HEATHER M. ROWAN
Presiding Administrative Law Judge
Office of Administrative Hearings