

**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.: 2023040038

System Tracking No.: CS0003923

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 14, 2023, by video and telephonic conference.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (SCLACRC or Service Agency). Claimant's foster Mother, guardian, and aunt (Foster Mother) represented Claimant.

Testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on June 14, 2023.

ISSUE PRESENTED

Should Claimant's Lanterman Act date of eligibility be retroactive to April 19, 2022, instead of October 20, 2022?

EVIDENCE RELIED ON

Exhibits 1 through 5; Exhibits A through C; testimony of psychologist Dr. Laurie McKnight-Brown and claimant's Foster Mother.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a thirteen-year-old female.
2. Some of the documents regarding the below-listed dates are not in evidence. However, the chronological history of this matter is not in dispute and the parties agree regarding these dates.
3. In September 2021, the Department of Family and Children Services placed claimant with Foster Mother. Thereafter, Foster Mother requested the handling of claimant's case be transferred from North Los Angeles County Regional Center to SCLARC. Forster Mother then requested SCLARC evaluate claimant for eligibility.
4. On April 19, 2022, SCLARC determined that claimant was not eligible for services and claimant was notified of the decision.

5. On May 17, 2022, claimant filed a Fair Haring Request which appealed SCLARC's decision denying eligibility and requested another medical assessment.

6. In July and August of 2022, the parties made attempts to obtain claimant's medical records from Kaiser Hospital. There were delays in obtaining claimant's records because Foster Mother was required to obtain written legal authority before Kaiser would produce claimant's medical records.

7. On August 30, 2022, SCLARC contacted Foster Mother and offered to complete another medical assessment to determine claimant's eligibility.

8. On November 1, 2022, SCLARC sent a letter to claimant which stated claimant had been re-assessed and found eligible to receive regional center services, beginning on October 20, 2022.

9. On March 23, 2023, Foster Mother contacted SCLARC and stated she wanted to appeal, in part, SCLARC's decision of eligibility for claimant. Specifically, claimant contends her date of eligibility should be April 19, 2022, instead of October 20, 2022.

10. On April 20, 2023, SCLARC sent a letter to claimant which confirmed claimant's eligibility for regional center services. The letter also denied claimant's request to change her date of eligibility from October 20, 2022, to April 19, 2022. The letter states claimant contended the first medical assessment was not valid and, if that assessment had been completed more accurately, claimant would have been found eligible in April 2022.

///

///

11. All jurisdictional requirements have been met.

The First Assessment of Claimant

12. On January 2, 2022, SCLARC sent claimant to psychologist Robert Koranda (Koranda) for an evaluation of claimant's condition. Koranda's report was later considered by SCLARC's eligibility team in determining whether claimant was eligible for services.

13. Koranda performed his evaluation by videoconference due to COVID-19 pandemic restrictions. Koranda's report detailed the potential negative impact of conducting a video evaluation as follows:

It should be noted that due to the COVID-19 pandemic, which restricts in-person clinical visits, the assessment was conducted using remote methods, consisting of on-screen assessment administration, the use of video to interact with (claimant) and observe her behavior, and telephone interviews with (claimant) and her caretaker. The standard administration of most of these instruments involves in-person, face-to-face methods. The impact of applying non-standard administration methods has been evaluated only in part by scientific research. While every effort was made to replicate standard assessment practices, the diagnostic conclusions and recommendations for treatment provided in this report are being advanced with these reservations.

14. Koranda concluded that claimant did not meet the criteria for a DSM-5 diagnosis of Intellectual Disability because there was insufficient evidence to support

the presence of deficits in general mental abilities, or impairment in everyday adaptive functioning. Koranda also opined that claimant did not meet the criteria for a DSM-5 diagnosis or Autism Spectrum Disorder because there was inadequate information to support the presence of persistent deficits in social communication and social interaction across multiple contexts. Koranda also concluded claimant did not exhibit restricted or repetitive patterns of behavior, interests, or activities.

15. Koranda opined that claimant's issues appeared to be the result of a mental disorder, rather than cognitive defects. Koranda found claimant to be upbeat and cooperative.

The Second Assessment of Claimant

16. On October 19, 2022, claimant was evaluated by Alyson Marx (Marx) licensed clinical psychologist. Marx concluded claimant exhibited deficits which presented as similar to Intellectual Disability. Marx noted in her report that her observations varied, at times, from those of prior medical professionals who had evaluated claimant. Marx noted that claimant's mood, or response to the person who is evaluating, can have a direct impact on claimant's responses and the observations and conclusions made by a medical professional. Marx found claimant to be, at times, uninterested in the evaluation or responding to questions. Unlike Koranda, Marx was able to review medical records from Kaiser Hospital during her evaluation.

17. After SCLARC received Marx's report, the eligibility team met to discuss claimant's situation. Neither Koranda nor Marx had diagnosed claimant with a qualifying eligible condition. Nevertheless, after reviewing all of the medical reports and available information, the SCLARC eligibility determined claimant was eligible under what is known as the "fifth category," which is a disabling condition found to be

closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.

Claimant's Contentions and Evidence

18. Claimant contends Koranda's assessment was not valid because it was not conducted in-person and, therefore, his report is unreliable. Claimant contends that if Koranda had performed his assessment of claimant in-person, the result would likely have been different and claimant's date of eligibility would have been April 19, 2022, the date SCLARC initially denied claimant's request for services.

19. Claimant did not offer any evidence regarding alternatives to Koranda's video assessment of claimant. The COVID-19 pandemic impacted the world and SCLARC and its vendors were following local and state laws and guidelines, which prohibited in-person assessments at that time. Additionally, it is noted that Foster Mother consented to the remote assessment before claimant was evaluated.

20. Dr. Laurie McKnight-Brown (Dr. MB) credibly testified that determining a person's eligibility is a process. Dr. MB is SCLARC's lead psychologist consultant and is a member of the eligibility team. This time length of this process varies for each potential consumer, depending on their particular situation. The process involves obtaining information from claimant and her family, obtaining past medical records, and obtaining the relevant assessments by medical professionals. Once all of these matters, or whatever is available, is obtained and provided to SCLARC, then SCLARC's multi-disciplinary eligibility team meets to confer on that person's potential eligibility to receive services.

21. Dr. MB has worked with doctors Koranda and Marx in the past on numerous occasions and she finds both are competent professionals. She credibly

testified that a person's mood, or the conditions where the testing is completed, can impact a person's performance, which could cause medical evaluators to reach different conclusions. Diagnosing a person with cognitive deficits and behaviors that are similar to autism is not always an easy task. This is especially true with a young person who may, on one occasion, be talkative and cooperative, and on another occasion be quiet and reserved, as was the situation in this matter.

22. Marx's opinion and observations of claimant differed from those of Koranda. However, Marx did not diagnose claimant with Intellectual Disability or Autism Spectrum Disorder.

23. It was not unreasonable for Koranda and Marx, evaluating claimant 10 months apart, to have different observations and opinions.

24. SCLARC's eligibility team reviewed the reports from Koranda and Marx, as well as the Kaiser Hospital medical records reviewed by Marx, which were not available to Koranda. After reviewing all of this information, the SCLARC eligibility team determined claimant was eligible for services under the fifth category.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in this matter, pursuant to Welfare and Institutions Code section 4710 et seq. All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

2. While Claimant has been made eligible under the Lanterman Act, the basic rules of eligibility should be reviewed here. The Lanterman Act, at section 4512, subdivision (a), defines developmental disabilities as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . This 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.

This latter category is commonly known as “the fifth category.” It was under this category that claimant was found eligible for services on October 20, 2022.

3. SCLARC, along with the other 20 regional centers in California administer the Lanterman Act. In this case, there is no dispute that SCLARC promptly assessed claimant. After eligibility was initially denied, and Foster Mother appealed and SCLARC agreed to have claimant re-evaluated. Therefore, the customary process was followed in this case and, while it took two evaluations to develop a complete picture of claimant’s deficits, the process worked, and claimant is now being offered services by SCLARC.

4. The ALJ’s jurisdiction in a fair hearing is fairly broad. Section 4706, subdivision (a), provides that “all issues concerning the rights of persons with developmental disabilities to receive services under this division shall be decided under this chapter, including those issues relating to fair hearings, . . . ”

5. It was not established that claimant was eligible for services on April 19, 2022. Neither Koranda nor Marx diagnosed claimant with a qualifying disability. To conclude that claimant was eligible for services in April 2022 would be speculative and without any proper evidence.

6. Additionally, it should be noted that in cases where the issue is whether a person is eligible to receive services, a determination of eligibility is not made retroactive; it runs prospectively from the time of the ALJ's decision in the case.

7. Because it was not established claimant was eligible for services under the Lanterman Act in April 2022, claimant's appeal is denied.

ORDER

Claimant's appeal is denied, and her October 20, 2022, date of eligibility for services under the Lanterman Act will not be backdated.

DATE:

CHRIS RUIZ

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.