

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

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER

Case No. CS0006152

OAH No. 2023050867

DECISION

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 3, 2023, from Sacramento, California.

Claimant's mother represented claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Evidence was submitted, the record closed, and the matter submitted for decision on July 3, 2023.

ISSUE

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

FACTUAL FINDINGS

Background

1. Claimant is a five-year-old girl. She was born three months premature. After her birth, she spent several months in the neonatal intensive care unit (NICU). In that period, she underwent several operations to address cardiac and intestinal issues, as well as an amputation of her left arm below the elbow. Claimant was released into foster care and was subsequently adopted by her biological aunt (hereinafter claimant's mother).

2. Claimant participated in the Early Start program because of her developmental delays. In February 2021, shortly before she aged out of the Early Start program, ACRC found claimant was not eligible for services under the Lanterman Act because she did not have one of the five qualifying conditions.

3. As of July 1, 2021, the legislature amended Welfare and Institutions Code section 4512 to allow children who were three or four years of age to be provisionally eligible for regional center services under specified conditions. Based on that change, ACRC found claimant was provisionally eligible on August 23, 2021, based on a developmental concern of "other" (unspecified) and substantial disabilities in the areas of self-care and receptive and expressive language.

4. A child found to be provisionally eligible must be reassessed before age five. In March 2021, ACRC performed a reassessment on claimant. ACRC collected medical, educational, and behavioral records, and ordered that claimant undergo a psychological evaluation. Based on the results of that evaluation and record review, ACRC's interdisciplinary team found that claimant was not eligible for services because she did not have any of the five qualifying conditions.

5. On April 18, 2023, ACRC issued a Notice of Action. ACRC advised claimant's mother that claimant was not eligible for regional center services because she did not have a qualifying developmental disability. On May 16, 2023, claimant's mother filed a Fair Hearing Request with ACRC, requesting a hearing. In that request, claimant's mother listed the reason for the appeal as:

[Claimant] is still suffering from everything she was diagnosed with. [Her] ABA results are developmentally delayed in all areas. [Claimant] has all of the spectrum issues and needs Alta for her full term.

Records Submitted for Eligibility Determination

6. Jennifer Amaro is claimant's service coordinator at ACRC. She testified about the documentation ACRC reviewed in claimant's eligibility determination. She has served hundreds of clients with autism spectrum disorder (ASD). Ms. Amaro believes that claimant functions like a typical five-year-old, although claimant has a physical disability because of her left-hand amputation.

MEDICAL AND EARLY START RECORDS

7. Claimant's August 2018 Early Start records reflect that she was at high risk for experiencing developmental delays or disabilities. She was born premature, was assisted by a ventilator for more than 48 hours in her first 28 days, had a severe and persistent metabolic abnormality, experienced a medical injury or illness, had multiple congenital anomalies, and was exposed to substances known to cause fetal anomalies during gestation. Her biological mother did not receive prenatal care during the pregnancy. Claimant received early intervention services from the Sacramento County Office of Education, such as specialized instruction, speech and language therapy, and occupational therapy.

8. Claimant's medical records document her appointments at the University of California Davis Medical Investigation of Neurodevelopmental Disorders (MIND) Institute and Shriner's Hospital for Children (Shriner's). In June 2019, claimant was 14 months old. She showed "developmentally typical skills in terms of her cognitive functioning." Her left arm amputation impacted her fine motor abilities. After a July 2020 video visit, her physician wrote that claimant's "developmental scores [were] in the average range for cognitive skills, average range for language skills, and borderline range for motor skills."

9. In March 2021, claimant's physician at Shriner's wrote that claimant "has been doing well developmentally, and is doing most things that her mother would expect for a 2-3-year-old." The same month, claimant had a video visit at the MIND Institute. That appointment addressed her intermittent staring spells of 30 to 60 seconds without loss of tone or extremity jerking. Her physician assessed claimant with the Developmental Profile-4 (DP-4), which uses a caregiver's reports to determine a child's development. Based on the DP-4, her physician found claimant's

“developmental skills [were] delayed in all areas” and claimant “would benefit from further developmental services due to global developmental delay.” They concluded claimant does not have cerebral palsy. Claimant underwent follow-up visits with the pediatric neurology department and an electroencephalography (EEG) test. Claimant’s EEG was normal with no signs of seizure activity. Her physician opined that claimant’s episodes could be “benign staring events,” caused by daydreaming or inattention.

10. In May 2021, claimant’s physician at the MIND Institute wrote in her impression that claimant should have a formal developmental evaluation because her complex medical history could be associated with long-term neurodevelopmental outcomes. Later that summer, her physician wrote that claimant was “doing so well in school that she does not qualify for any IEPs apart from ortho[.]” By fall 2021, claimant’s medical records focus on her behavioral difficulties, such as impulsivity, and sleep disturbances.

11. When claimant visited the MIND Institute in July 2022, her physician wrote claimant was “still hitting milestones but has some motor delay.” Her speech was improving. Her October 2022 office visit notes mention her global developmental delay, that she did not always know her own first and last name, and she was unable to dress independently.

EDUCATIONAL RECORDS

12. Claimant is in the Elk Grove Unified School District. She underwent an Interdisciplinary Assessment Report in August 2021 to develop her Individualized Education Program (IEP). The assessment included a psychoeducation evaluation by a school psychologist who administered the Differential Ability Scales, Second Edition (DAS-2) to claimant. The DAS-2 evaluates an individual’s conceptual and reasoning

skills, like an IQ test. Claimant scored low on verbal comprehension, below average on naming vocabulary, average on picture similarities, and low on pattern construction. The psychologist believed claimant's results underestimated her abilities because claimant's efforts decreased as testing progressed. Thus, claimant was not found to demonstrate delays in conceptual and reasoning skills. Claimant's sole disability found by the IEP team was the orthopedic impairment caused by her left arm amputation, which impacted her fine motor activities.

INDIVIDUAL PROGRAM PLANS

13. ACRC provided claimant's Individual Program Plans (IPPs) for 2021, 2022, and 2023. The IPPs reflect that claimant is a communicative and social child. She initiates and maintains interactions in all settings. Claimant is eager to learn, resilient, and very active. She is ambulatory and walks with good balance. She struggles with fine motor tasks using her left arm and requires assistance to complete some activities of daily living, such as cutting her food or dressing with clothes that have zippers or buttons. As of March 2023, claimant slept well but lacked awareness of safety hazards. Her ability to focus is limited and generally does not exceed five minutes. She experienced behavioral excesses when frustrated. She did not attend school in-person during the 2021–2022 and 2022–2023 school years because of COVID-19 safety concerns.

14. Under her IPPs, claimant was eligible to receive Applied Behavior Analysis (ABA) services because of her yelling/screaming, physical aggression, and self-injury. In May 2022, Maxim Healthcare Services was assigned to provide claimant's ABA services. The ABA services ended in February 2023 because of scheduling issues. No progress was made because claimant did not begin her ABA services during the authorization period.

MARCH 2023 PSYCHOLOGICAL EVALUATION

15. On March 31, 2023, ACRC referred claimant to Haleigh Scott, Ph.D., for a psychological evaluation to determine claimant's continuing eligibility for services. During the testing, claimant exhibited typical use of eye contact, gestures, and facial expressions. Her participation during the cognitive assessment varied. She needed frequent breaks to visit with her mother and reminders when she preferred to play with the materials rather than complete a task. Dr. Scott noted "it was challenging to get [claimant] to give her best effort as the testing went on."

16. Dr. Scott performed a Stanford-Binet-5th Education assessment of claimant's general intellectual ability. In this assessment, the mean standard score is 100 and the standard deviation is 15. Claimant's full-scale IQ was 81, which fell into the "low average" range, similar to or slightly behind other children her age. Her personal strength was quantitative reasoning, in which she scored average. Her personal weakness was working memory, in which she scored exceptionally low. Based on claimant's struggle to stay focused, Dr. Scott thought the assessment underestimated claimant's intellectual abilities.

17. Dr. Scott also used the Autism Diagnostic Observation Schedule, Module 3-Second Edition (ADOS-2) to assess claimant for ASD. Dr. Scott experienced challenges during the assessment, as claimant became tired and had difficulty staying focused for any amount of time. Claimant demonstrated appropriate social skills and was eager and cooperative when activities were play-based. She did not engage in repetitive play or language. Similarly, she did not show any sensory sensitivities or restricted interests.

18. Overall, Dr. Scott found claimant displayed few signs or symptoms associated with ASD during the assessment. She listed the diagnostic criteria for ASD contained in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The only criterion that claimant exhibited was “hyperactivity to sensory input or unusual interest in sensory of the environment,” based solely on her mother’s report that claimant was sensitive to loud noises. Dr. Scott’s diagnostic impression was that claimant did not have any DSM-5 diagnoses.

Testimony of Catarina Juan Fishman, Psy.D.

19. Catarina Juan Fishman, Psy.D., has worked at ACRC as a staff psychologist since January 2022. She received her Doctor of Psychology degree, with a focus in clinical psychology, from the California School of Professional Psychology in August 2015. She was licensed by the California Board of Psychology in 2020. Her pre- and post-doctoral work focused on child mental health services. In her current job, Dr. Juan Fishman completes eligibility reviews and psychological evaluations for ACRC. She reviews about 50 to 60 eligibility cases each month. She was part of the team that reviewed claimant’s records to see if she had a qualifying condition for ACRC services.

20. Dr. Juan Fishman relies on the DSM-5 to identify criteria for the diagnosis of ASD and intellectual disability. For conditions similar to intellectual disability, she relies on the Association of Regional Center Agencies “Guidelines for Determining ‘5th Category’ Eligibility” (the Guidelines). The DSM-5 diagnostic criteria for ASD include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important

areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay.

21. The DSM-5 diagnostic criteria for “intellectual developmental disorder,” otherwise known as intellectual disability, include deficits in intellectual functions; deficits in adaptive functioning that result in failure to meet standards for personal independence; and an onset of intellectual and adaptive deficits during the developmental period. The disorder’s severity can range from mild to profound. A person with an intellectual disability would have a score of approximately two standard deviations or more below the population mean in an IQ test. For example, in a test with a standard deviation of 15 and mean of 100, a person with an intellectual disability would have a score of 65–75 or below. A score of 81 would not qualify.

22. Dr. Juan Fishman reviewed all the records provided at the hearing. Based on her review of these records, she agreed with Dr. Scott’s diagnostic conclusion that claimant does not have a DSM-5 diagnosis. None of the records claimant’s mother provided, including claimant’s IEP assessment, includes a diagnosis of ASD. Thus, Dr. Juan Fishman concluded claimant is not eligible for regional center services based on ASD. Additionally, based on the DSM-5 and the Guidelines, Dr. Juan Fishman does not believe claimant qualifies for regional center services based on intellectual disability or the fifth category. Finally, Dr. Juan Fishman explained that claimant can return to ACRC in the future if she has new information that supports a diagnosis for one of the five qualifying conditions.

Claimant’s Evidence

23. Claimant’s mother explained the medical struggles that claimant experienced since birth and how she has continually overcome the odds to survive and

thrive. She recounted how, at times, claimant flaps her hand and is unable to stop hitting herself. Claimant's mother said that claimant's self-injurious behavior was one of the reasons that claimant was unable to attend school, in addition to the risk that claimant faced from COVID-19 because of her risk factors. Claimant's mother has taught claimant at home for the past three years. She said that claimant will attend school in-person in the fall.

24. Claimant's mother also spoke about claimant's challenging behaviors. She described how claimant can be emotionally out of control. She has worked with claimant on techniques to redirect claimant's energy. However, it is difficult for claimant's mother to provide the amount of care that claimant requires every day. Claimant's mother is glad that claimant is "on the high end," but she worries that claimant will be unable to function in society. Claimant struggles to redress herself after toileting and, emotionally, claimant "needs all the help she can get."

25. At the hearing, claimant's mother provided about two dozen videos and pictures of claimant. She believes these exhibits provide more insight into claimant's condition than test results. The videos depict claimant in her home, in restaurants, and outside, engaged in a variety of activities. In some videos, claimant appears to be in a good mood and focused on her activity. In others, claimant exhibits challenging behavior. In the videos in which claimant yells and has tantrums, her mother speaks calmly to assist her, and they perform breathing exercises together.

26. Claimant's mother also provided an August 2022 report from Maxim Healthcare Services about claimant's ABA services. The August 2022 report notes that claimant's ABA services had not yet begun because claimant's mother requested to delay the services based on the family's housing situation.

27. Claimant's mother's main goal is to make sure that claimant "is good forever." She sees all the services that ACRC can offer clients, and she wants to make sure that claimant will receive them. She requests that the eligibility decision not rely on the test results because ACRC's interdisciplinary review committee did not meet and get to know claimant. She does not believe that claimant should be found to be ineligible for services because she is smart.

Analysis

28. Under the Lanterman Act, the legislature has authorized regional centers to provide services only to those individuals who have developmental disabilities that fall into one of the five categories: (1) intellectual disability; (2) cerebral palsy; (3) epilepsy; (4) ASD; or (5) a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. Claimant's mother failed to establish that claimant is eligible for services under the Lanterman Act.

29. Dr. Juan Fishman persuasively testified that, based on Dr. Scott's report and the record review, claimant does not suffer from ASD, intellectual disability, or a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. The Elk Grove School District performed a comprehensive evaluation of claimant. The evaluation included the administering of cognitive and behavior assessments. The results illustrated that claimant's sole disability arises from her left arm amputation. This disability does not qualify as a developmental disability because it is a physical disability not associated with neurological impairment. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

30. Additionally, none of claimant's medical providers have diagnosed claimant with ASD, intellectual disability, or presented findings that she has a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. While claimant has had substantial medical treatment to address the challenges she has faced since birth, none of her diagnoses include conditions that qualify claimant for services under the Lanterman Act.

31. Claimant's mother clearly wants claimant to have the best supportive services for any challenges she may face. However, the legislature did not grant regional centers the authority to provide services to individuals whose conditions fall outside the five specified categories of developmental disabilities.

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).) Developmental disabilities do not include conditions where the applicant is impaired solely because of a physical disability caused by disease, accident, or faulty development not associated with neurological impairment. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

4. Any person believed to have a developmental disability is eligible for intake and assessment services in the regional centers. (Welf. & Inst. Code, § 4642, subd. (a)(1).) Assessment may include reviewing available historical diagnostic data, providing necessary tests and evaluations, and summarizing developmental levels and service needs. (Welf. & Inst. Code, § 4643, subd. (a).) In making its determination, the regional center may consider evaluations and tests, including intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations. (*Id.* at subd. (b).) Any individual found to be ineligible for regional center services may appeal the decision under Welfare and Institutions Code sections 4700 through 4716. (Cal. Code Regs., tit. 17, § 54010, subd. (c).)

5. As set forth in the Factual Findings, claimant's mother did not establish that claimant qualifies for services under the Lanterman Act because she is an individual with ASD, an intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. Consequently, she did not establish that claimant qualifies for services from ACRC under the Lanterman Act. Claimant's appeal must therefore be denied.

ORDER

Claimant's appeal is DENIED. ACRC's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATE: July 7, 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.