

**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. 2023060620

DDS No. CS007011

DECISION

Laurie Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 30, 2023. Stella Dorian, Due Process Officer, represented North Los Angeles County Regional Center (Service Agency or NLACRC). Claimant's grandmother/foster mother (Grandmother) represented claimant, who was not present at the hearing. (Names are omitted and family titles are used to protect the privacy of Claimant and her family.)

Testimony and documentary evidence was received. At the conclusion of the hearing on August 30, 2023, the record was closed, and the matter was submitted for decision.

ISSUE

Is Claimant eligible for regional center services based upon a diagnosis of a developmental disability under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code (Code) section 4500 et seq. (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-27, 29 and 30.

Testimonial: Heike Ballmaier, Psy.D., NLACRC's Supervisor of Psychological Services, and Grandmother.

FACTUAL FINDINGS

Background Information

1. Claimant is an 11-year-old female seeking Regional Center eligibility for autism spectrum disorder (ASD) and/or intellectual disability (ID). She has difficulty functioning and has exhibited severe behaviors at home, at school, and in the community.

2. In June 2019, Claimant was removed from her parents. While living with them, she had experienced abuse and neglect, including witnessing domestic violence

and drug use, and regularly being forced to consume alcohol so she would sleep. Claimant was placed in foster care for three months and was then placed with her paternal Grandmother for foster care in September 2019. Claimant lives with Grandmother, two aunts, and Claimant's six siblings.

2020 Assessment

3. NLACRC conducted a telehealth psychological assessment of Claimant and reviewed all available information for the purpose of making a regional center eligibility determination due to Claimant's history of maladaptive behaviors, physical aggression, and academic struggles.

4. The telehealth psychological assessment was completed on April 27, 2020, by Renee Kim, Psy.D.. on behalf of NLACRC, to determine Claimant's cognitive, adaptive, and social functioning. Dr. Kim administered the Wechsler Intelligence Scale for Children - 5th Edition (WISC-V); Autism Diagnostic Observation Schedule - 2nd Edition (ADOS-2); Adaptive Behavioral Assessment - 3rd Edition (ABAS-3); Social Responsiveness Scale - 2nd Edition (SRS-2); and the Conners Comprehensive Behavior Rating Scales - Parent (Conners CBRS-P).

5. Based upon Claimant's history, interviews, and test results, Dr. Kim diagnosed Claimant with Attention Deficit Hyperactivity Disorder (ADHD), Post-Traumatic Stress Disorder (PTSD), and Disruptive Mood Dysregulation Disorder (DMDD). DMDD can result in very severe temper tantrums which are not explained by the circumstances. None of those diagnoses constitutes a developmental disability.

6. Testing performed by Dr. Kim did not indicate a diagnosis of either ASD or ID, a condition similar to ID or that requires treatment similar to that required for individuals with an ID. Claimant's cognitive functioning was measured by the verbal

comprehension subtests on the Wechsler Abbreviated Scales of Intelligence, 2nd Edition (WASI-II). Claimant obtained a Verbal Comprehension Composite of 87, which fell in the Low Average range.

7. Dr. Kim administered the Autism Spectrum Rating Scales (ages 6-18) Parent Rating Form (ASRS) and ADOS-2 to determine whether Claimant has ASD. The results of the ASRS indicated an overall elevated score, which Dr. Kim attributed to Claimant's history of significant behavior difficulty. However, the results of the ADOS-2 fell below the autism cut-off range. In her interactions with Dr. Kim, Claimant remained cooperative and attentive to tasks. She looked directly into the camera when providing answers and used eye gaze to anticipate other's responses when offering information about herself. Claimant did not engage in restrictive or repetitive behaviors.

8. Dr. Kim recommended continuing mental health supports to increase coping skills and address safety and behavior concerns, as well as obtaining support from the school district to address possible learning disabilities and problematic behaviors in school.

9. NLACRC's Eligibility Determination Committee determined that Claimant did not meet Lanterman Act eligibility requirements. By letter dated May 13, 2020, NLACRC informed Grandmother that Claimant was ineligible for regional center services because she does not have a qualifying developmental disability. That determination was not appealed.

2023 Assessment

10. On July 29, 2022, the Los Angeles County Department of Children and Family Services (DCFS) referred Claimant back to NLACRC for reevaluation. On August 19, 2022, Claimant was enrolled in the Star View Wraparound program for children and

youth with special mental health needs. The team consisted of a Mental Health Therapist, Behavioral Support Specialist, Case Manager/Facilitator and Grandmother. Based on their observations of Claimant's social and behavioral deficits, the treatment team at Star View recommended that Claimant undergo a regional center evaluation.

11. On November 16, 2022, a telephonic social assessment was conducted with Grandmother and Bill Sie, NCLARC Intake Coordinator. Sie recommended scheduling evaluations of Claimant to determine her eligibility for regional center services and supports.

12. Jennifer Yeung Chan, Psy.D., reassessed Claimant on NLACRC's behalf. Dr. Chan conducted a psychological assessment of Claimant which included interviews and extensive testing using the WISC-V; ADOS-2; ABAS-3; SRS-2; and Conners CBRS-P.

13. Claimant's ADOS-2 scores were below the cut-off for ASD and her behaviors during the evaluation did not support an ASD diagnosis.

14. Claimant obtained a full-scale IQ score that placed her within the very low range (in the fifth percentile). The pattern of her WISC-V scores suggests uneven cognitive ability development in different domains. In particular, Claimant's fluid reasoning skills are better developed than her verbal comprehension, visual spatial, and working memory skills and her processing speed. Claimant was further examined by Dr. Chan using the General Ability Index (GAI), which is less impacted by processing speed and working memory. Claimant's GAI score placed her within the low average range, which Dr. Chan considered to be the best indicator of her current intellectual development.

15. Dr. Chan provided a diagnosis of ADHD, PTSD by history, and DMDD by history. Neither the tests nor behavioral observations resulted in a diagnosis of ASD,

ID, a condition similar to ID, or that requires treatment similar to that required for individuals with an ID.

16. On April 26, 2023, the NLACRC Eligibility Determination Committee again determined that Claimant did not meet Lanterman Act eligibility requirements in that she did not have a qualifying developmental disability because she did not meet the diagnostic criteria for eligibility.

Jurisdictional Matters

17. On June 12, 2023, Grandmother filed a fair hearing request, on Claimant's behalf, to appeal Service Agency's April 2023 decision that Claimant is ineligible for Regional Center services because she does not have a "developmental disability" as defined in Code section 4512, subdivision (a)(1).

ADDITIONAL RECORDS CONSIDERED

18. On July 13, 2023, Service Agency held an informal telephonic meeting with Grandmother to discuss Claimant's appeal. At the conclusion of the informal meeting NLACRC asked Grandmother if there were additional mental health and educational records available. Grandmother stated there were, and the regional center agreed to defer an eligibility decision pending its receipt of the additional information.

19. NLACRC received the following additional records:

- a. A Child/Adolescent Full Assessment of Claimant had been performed by Penny Lane, a mental health service provider, which prepared a report of the assessment dated January 10, 2020. Claimant was diagnosed with PTSD and ADHD and began to receive intensive wrap-around services including in-home and out-patient services.

- b. A psychological evaluation was conducted by Alan Golian, Psy.D., dated June 12, 2020. Based on Grandmother's report, clinical observations, and standardized assessments, Dr. Golian diagnosed Claimant with DMDD and PTSD and suggested that she continue to receive mental health services. He also diagnosed possible disorders in the areas of reading, mathematics, and written expression. Dr. Golian opined that Claimant's symptoms and behaviors are not attributed to or exacerbated by intellectual and/or cognitive deficits. While Claimant's test scores were in the average to low average range for intelligence, achievement testing showed her academic skills were in the extremely low to very low range. Dr. Golian concluded that the significant discrepancy between Claimant's intellectual functioning and her low academic achievement scores may signify learning disabilities in the areas of reading, writing, and mathematics.
- c. Stars Behavioral Health Group, Inc. (Stars), provided a Child and Adolescent Needs and Strengths Evaluation of Claimant, dated June 20, 2023, and a letter from Deborah Curry, LMFT, Starview Mental Health Services Supervisor, dated July 17, 2023. Social and behavioral concerns were noted including problems with social interactions and communication; struggles with doing and completing tasks independently; struggles with age-appropriate decision-making; safety concerns; inability to navigate social norms; extreme tantrums; and serious boundary issues.

NOTICE OF ACTION

20. By letter dated August 15, 2023, NLACRC informed Grandmother that upon thorough review of all available information, including the additional records provided, the NLACRC Interdisciplinary Eligibility Determination Committee determined that Claimant is not eligible for regional center services, as her condition does not meet the definition of a developmental disability as defined in law and regulations. This hearing ensued. All jurisdictional requirements have been met.

NLACRC's Evidence and Contentions

TESTIMONY OF DR. BALLMAIER

21. Heike Ballmaier, Psy.D., testified at the hearing. She is NLACRC's Supervisor of Psychologists and Intake Services in the Lancaster office and serves on NLACRC's interdisciplinary team conducting eligibility assessments. Dr. Ballmaier is licensed in California as a psychologist and as a Board-Certified Behavioral Analyst.

22. At the administrative hearing, Dr. Ballmaier explained the eligibility categories and substantial disability requirements set forth in the Lanterman Act and its regulations. She explained the interdisciplinary team consults diagnostic criteria and identifying characteristics of ID and ASD in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to determine eligibility for services and supports under the Lanterman Act's qualifying categories of ASD and ID. (Exs. 23 and 24.)

23. The DSM-5 has no diagnostic criteria for the Lanterman Act's "fifth category," which is intended to capture disabling conditions closely related to ID or requiring treatment similar to that required for individuals with ID. Dr. Ballmaier

explained the interdisciplinary team employs the Association of Regional Center Agencies Guidelines for Determining "5th Category" Eligibility for the California Regional Centers to determine whether an individual functions in a manner that is similar to that of a person with ID or requires treatment similar to that required by individuals with ID and is substantially handicapped with major impairment in several domains, including communication, learning, self-care, mobility, and self-direction. (Ex. 26.)

24. The team reviews and discusses the applicant's entire chart to determine whether the eligibility criteria are met. For Claimant's case, the team reviewed all available information and looked at the "whole picture," including each of the assessments and psychological evaluation reports. NLACRC considered cognitive testing and other test scores, reports, and records from the school district, health care providers, and mental health hospitalizations, and interviews with Grandmother.

25. Eligibility for regional center services is governed by state statutes and regulations. To be eligible for regional center services, an individual must be diagnosed with a developmental disability which originates before age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability.

26. The disability must be attributable to one of the following categories: ASD, ID, cerebral palsy, epilepsy, and other conditions similar to ID or requiring treatment similar to that required by individuals with ID. Individuals with disabilities that are solely due to a psychiatric disorder, learning disability, or physical disability are not eligible for regional center services.

27. Substantial disability is defined as the existence of significant functional limitations in three or more of the following areas of major life activity, as determined

by the regional center, and as appropriate to the age of the person. For a child these include self-care, receptive and expressive language, learning, mobility, and self-direction.

28. Claimant exhibits behavioral problems at home, at school, and in the community. She has frequent nightmares, angry outbursts, and severe tantrums, is very aggressive towards her siblings, engages in self-injurious behaviors, fidgets, has difficulty completing tasks, and is behind academically.

29. Claimant was fully assessed for eligibility by NLACRC in 2020 and again in 2023. In making its eligibility determination, NLACRC also reviewed all available records. NLACRC concluded that Claimant is not eligible for regional center services as she does not have a developmental disability as defined by statute. While her behaviors are significant, the evidence presented established diagnoses of DMDD, ADHD, PTSD, and learning disabilities and did not substantiate diagnoses of ASD and/or to ID or a condition similar to ID. Accordingly, NLACRC concluded that Claimant is not eligible for regional center services because her maladaptive behaviors and deficits are solely due to a psychiatric disorder and/or learning disabilities, rather than due to ASD, ID, or a condition similar to ID.

30. Dr. Ballmaier notes that Claimant's full-scale IQ (FSIQ) score was ranked as "very low" in March 2023, but the pattern of her scores showed great variability and uneven development in different domains. Because that renders the FSIQ scoreless representative of Claimant's general intellectual functioning, Dr. Chan relied on the General Ability Index, which placed Claimant in the "low average range" for intellectual functioning. (Ex. 19, pp. A145.)

31. While the testing did not establish ID, it may suggest some uncertainty as to Claimant's cognitive ability given the variability in scores across domains. Dr. Ballmaier states that if Claimant's appeal is not successful, Claimant may wish to reapply and be reassessed for regional center eligibility again next year.

Claimant's Evidence and Contentions

32. Grandmother testified at the hearing. She wants to be certain that Claimant gets all the services and supports she needs because Grandmother believes Claimant will be reliant on others over the course of her entire life.

33. Claimant was placed on a psychiatric hold at Del Amo Hospital in October and November 2019, for aggressive and self-injurious behaviors, destroying property, and homicidal ideation which included stating that she wants everyone in her home to die. She was placed on medication and released with a diagnosis of DMDD and ADHD. Referrals were made for mental health services.

34. Claimant was again deemed to be a danger to others and was placed on a psychiatric hold and hospitalized at Kedren Acute Psychiatric Hospital (Kedren) from July 26 to August 15, 2022. At Kedren, Claimant was diagnosed with DMDD.

35. After hospitalization at Kedren, Claimant was seen at Stars. She receives mental health services on a weekly basis and participates in monthly child and family team meetings. Claimant receives special education services. In its report dated September 6, 2022, Stars notes that Claimant's "vocabulary and abstract understanding was age appropriate. [She] was at least of average intelligence." Mental health services were recommended. (Exhibit 6, pp. A55-56.)

36. Stars and Grandmother noted that Claimant's current problems with social interactions and communication include the following: Claimant struggles with basic social norms when communicating, such as lack of eye contact or holding eye contact for too long. She also struggles with the use of communication to get her needs met, fails to notice or understand the emotions of others, has trouble describing feelings, and has difficulty adjusting her behaviors to different social situations. Claimant also has difficulty maintaining and establishing friendships. She becomes very upset by minor changes and sounds or loud noises. She appears to need rigid routines, doesn't seek help and requires a lot of repetition to learn and understand new behaviors.

37. According to Stars and Grandmother, Claimant struggles with doing and completing tasks independently. She needs constant prompting and hands-on direction for daily tasks, chores, and schooling. Claimant struggles at times with conversations and does not seem to be able to understand the conversational flow. She will shift to something she is more interested in speaking about and is not easily redirected back to the original conversation. Claimant has trouble following directions, understanding nonverbal communication, and expressing herself. She struggles with academic levels and retaining and remembering information learned at school. Claimant at age 11 still struggles with age-appropriate decision making, safety concerns, and navigating social norms.

38. Grandmother and Stars note that Claimant presents with problems of emotional development as evidenced by acting younger than a child at her own age level. In particular, Claimant screams as though she is a child younger than her age. She does not appear to understand that she is older than others around her and will act their age instead of her own. Claimant has extreme tantrums (screaming, hitting,

kicking, breaking things). She displays issues with personal judgment by engaging in risky behaviors such as climbing on things despite the danger involved. Claimant needs constant supervision to avoid inappropriate touching and sexualized behaviors. She does not seem to understand personal boundaries.

39. Grandmother assists claimant with bathing, toileting, and grooming. Claimant wears pull-ups at night and refuses to brush her teeth or bathe.

40. Grandmother states that medications prescribed for Claimant only "simmer" her tantrums but do not stop them.

41. According to Grandmother, Claimant speaks in a child-like voice and is "obsessed with Hamilton." Grandmother states that Claimant's current psychologist, Dr. Holt, told her that Claimant has ASD, but Dr. Holt did not testify at the hearing or provide documents supporting an ASD diagnosis.

42. Claimant has an Individualized Education Program (IEP) due to specific learning disabilities and ADHD. She receives special education services. The IEP Amendment dated September 14, 2022, notes that Claimant is functioning below grade level, has difficulty with writing and math, but exhibits a positive attitude in class, asks for help, is social with peers, follows instructions, and can be redirected. (Exhibit 12, p. A101.)

LEGAL CONCLUSIONS

Legal Principles

1. This matter is governed by the Lanterman Act, set forth at Code section 4500 et seq., and the implementing regulations set forth at California Code of Regulations, title 17, section 54000 et seq.

2. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 16, 17 and 20.)

3. Generally, when a person seeks to establish eligibility for government benefits or services, the burden of proof is on them to prove by a preponderance of the evidence that they meet the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

4. To establish eligibility for regional center services, a person must prove they have a "developmental disability," which is defined under Welfare and Institutions Code section 4512, subdivision (a)(1), as follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the

Superintendent of Public Instruction, 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.

5. (A) For purposes of establishing eligibility under the Lanterman Act, the term "developmental disability" excludes disabling conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c); Code, § 4512, subd. (a).)

(B) "Solely psychiatric disorders [are those] where there is impaired intellectual functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

(C) "Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized [intellectual disability], educational or psycho-social deprivation, psychiatric disorder, or sensory loss." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).)

(D) "Solely physical in nature" refers to disabling conditions that "include congenital anomalies or conditions acquired through disease, accident, or faulty

development which are not associated with a neurological impairment that results in a need for treatment similar to that required for [intellectual disability].” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

6. The term “substantial disability” is defined in Code section 4512, subdivision (j)(1), as follows:

“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:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living [for an adult].

(G) Economic self-sufficiency [for an adult.]

7. In determining if an individual meets the Lanterman Act’s definition of developmental disability, “the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric

tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Code, § 4643, subd. (b).)

8. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

Analysis

9. In this case, the preponderance of the evidence established NLACRC correctly determined Claimant is ineligible for regional center services because she does not have a qualifying "developmental disability" as defined by the Lanterman Act. Specifically, it was not established by a preponderance of the evidence that Claimant has ASD or ID, or a condition similar to ID, or that requires treatment similar to that required for individuals with an ID.

10. Claimant was fully assessed for eligibility by NLACRC in 2020 and again in 2023. In making its 2023 eligibility determination, NLACRC held off on a determination until it had reviewed all available records. While Claimant's behaviors are significant, the evidence presented established diagnoses of DMDD, ADHD, PTSD, and learning disabilities. The evidence presented did not substantiate diagnoses of ASD and/or ID, a condition similar to ID, or that requires treatment similar to that required for individuals with an ID. Accordingly, NLACRC properly concluded that Claimant is not eligible for regional center services because she does not have a developmental disability as defined by statute, and her behaviors are solely due to a psychiatric disorder and/or learning disabilities, rather than due to ASD, ID, a condition similar to

ID, or a condition that requires treatment similar to that required for individuals with an ID. (Factual Findings 1-29.)

11. Based on the foregoing, Claimant failed to establish by a preponderance of the evidence that she has a developmental disability, as defined by the Lanterman Act, that qualifies her for regional center services. Claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied. Service Agency's determination that Claimant is ineligible for services under the Lanterman Act is upheld.

DATE:

LAURIE PEARLMAN
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.