

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2023090374

DDS No. CS0009144

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 16, 2023.

Ron Lopez, IDEA Specialist and Fair Hearing Specialist Designee, represented Westside Regional Center (WRC or Service Agency).

Claimant's Mother and Father represented Claimant. Claimant was not present for the hearing. (Claimant and his parents are not identified by name to protect their privacy.) A Spanish interpreter assisted Mother at the hearing.

The administrative law judge heard testimony and received documentary evidence. The record was closed and the matter was submitted for decision at the close of the hearing.

ISSUE

Whether Claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED ON

The administrative law judge relied on Exhibits 1 through 11 submitted by WRC and the testimony of WRC Director of Clinical Services Thompson Kelly, Ph.D., Mother, and Father.

FACTUAL FINDINGS

1. Claimant is five years old. He seeks regional center services based on claims of autism, intellectual disability, or a condition similar to or requiring treatment similar to that required of individuals with intellectual disability.
2. In September 2022, when Claimant was four years old, WRC determined Claimant was provisionally eligible for regional center services based on a diagnosis of Mixed Receptive-Expressive Language Disorder.
3. On June 23, 2023, WRC sent a Notice of Action to Mother, stating Claimant would be ineligible for regional center services after he turned five years old

on September 19, 2023. (Exhibit 6, p. A45.) In the Notice of Action, WRC asserted its multidisciplinary team had reviewed the available exams and records and determined Claimant was not diagnosed with an intellectual disability, autism, cerebral palsy, epilepsy, or a condition similar to an intellectual disability as referenced in Welfare and Institutions Code (Code) section 4512. (*Id.*, p. A46.)

4. On August 22, 2023, WRC received Mother's appeal of WRC's denial of Claimant's eligibility. (Exhibit 6, p. A30.) In her appeal, Mother noted Claimant still required speech therapy and other services provided through the regional center. She also noted Claimant's speech and behavior remained inadequate and atypical. (*Id.*, p. A31.)

5. All jurisdictional requirements were satisfied to allow this hearing to go forward.

Background

6. Claimant's history is gleaned from the statements Mother and Father made to Amalia Sirolli, Ph.D., as part of Dr. Sirolli's interview in preparing Claimant's psychological assessment. As noted in Dr. Sirolli's report, Mother had an uneventful pregnancy. Claimant was delivered by cesarean delivery at 43 weeks' gestation. He weighed six pounds and 11 ounces at birth. Mother reported no complications at birth. (Exhibit 7, p. A53.)

7. Claimant sat without assistance at 10 months old, never crawled, and started to walk when he was 19 months old. He was toilet trained at four years old. He has no medical issues and is believed to have good vision and hearing. Claimant eats a variety of foods and sleeps through the night.

8. Claimant is part of a bilingual family where the parents speak English and Spanish. He said his first words when he was two years old. He put together words by four years old. Although Claimant now uses more complete sentences, the intelligibility of his speech is low. Mother reported to Dr. Sirolli that Claimant has always found speech and language development to be challenging.

2022 ASSESSMENT

9. Dr. Sirolli first performed an in-person psychological evaluation of Claimant on August 29 and 31, 2022, when Claimant was three years and 11 months old. The purpose of the evaluation was to determine whether Claimant was provisionally eligible for regional center services. (Exhibit 7.) As part of the evaluation, Dr. Sirolli administered the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV), the Autism Diagnostic Observation Schedules, Second Edition, Module 1 (ADOS 2), the Autism Spectrum Rating Scales, and the Vineland Adaptive Behavior Scales (Vineland-III) tests. Dr. Sirolli also interviewed Mother, Father, and Claimant’s babysitter as well as personally observed Claimant.

10. Dr. Sirolli administered the WPPSI-IV to evaluate Claimant’s cognitive functioning. She found his full-scale IQ score was in the low average range (FSIQ: 84). She also found his Verbal Comprehension Index score was in the mild deficit range, his Visual Spatial Index was in the high average range, and his Working Memory was in the borderline range. (Exhibit 7, p. A54.) She noted Claimant’s preferred activities were building puzzles with cardboard pieces or blocks, and Claimant did a “very good job” on these tasks. (*Id.*, p. A55.) Dr. Sirolli also observed Claimant “struggled most with tasks requiring the use of his receptive and expressive skills.” (*Ibid.*)

11. None of the tests administered by Dr. Sirolli indicated Claimant had autism. Claimant's total score for the ADOS-2 was below the autism range; Claimant responded to his name, made eye contact, played interactively with others, engaged socially, and was cooperative. Mother and Father separately responded to the Autism Spectrum Rating Scales and their responses placed Claimant in the average range. Both Mother and Father indicated Claimant smiled appropriately and made good eye contact but they also indicated Claimant did not always play with other children or seem to understand how others may feel. Mother and Father also indicated Claimant did not focus obsessively on details and did not engage in repetitive speech, hand-flapping, or echolalia. (Exhibit 7, pp. A55–A56.)

12. Dr. Sirolli found Claimant's language skills were in the low range and he was in the low range of functioning based on Mother and Father's ratings on the Vineland-III. Mother and Father rated Claimant's daily living skills to be in the moderately low range and his sensorimotor functioning to be in the moderately low range.

13. Based on Dr. Sirolli's observations and her interviews with Claimant's parents and babysitter, Dr. Sirolli found Claimant did not meet the criteria for an autism diagnosis. She also did not find Claimant to be intellectually disabled. However, Dr. Sirolli found Claimant to be behind same-aged peers in his speech and adaptive skills. She therefore diagnosed Claimant with a Language Disorder.

REGIONAL CENTER SERVICES

14. Based on Dr. Sirolli's assessment, WRC determined Claimant was provisionally eligible for regional center services based on a diagnosis of Mixed Receptive-Expressive Language Disorder. (Exhibit 10, p. 81.) According to Claimant's

Individual Program Plan (IPP), based on an IPP meeting held on December 5, 2022, WRC authorized Claimant to receive fifteen units for an Applied Behavior Analytics behavior assessment and 28 hours of monthly respite for Claimant's parents. According to Claimant's parents, Claimant received two hours each week of speech and behavior therapy, although WRC had authorized up to 10 hours weekly. A staffing shortage prevented Claimant from receiving the full authorized amount.

2023 ASSESSMENT

15. On May 26 and June 6, 2023, Dr. Sirolli re-assessed Claimant to determine whether he remained eligible for regional center services after he turned five years old. (Exhibit 7.) The assessment was performed in person. Claimant was four years and eight months old at the time of this assessment.

16. As part of the assessment, Dr. Sirolli administered the Stanford Binet Intelligence Scales – 5th Edition (Stanford Binet), ADOS 2, the Autism Spectrum Rating Scales, and the Vineland III. Dr. Sirolli also interviewed Mother, Father, and Evette Gomez, the case manager for Speech, Language, and Educational Associates who conducted an assessment of Claimant on January 29, 2023, to determine his speech and behavioral therapy needs.

17. Claimant's scores on the Stanford Binet tests showed a wide gap between nonverbal and verbal scores. His non-verbal IQ score was in the average range while his verbal comprehension was in the borderline range. His fluid reasoning verbal score was low average while his non-verbal score was average. Similarly, Claimant's verbal knowledge score was in the mild intellectual deficit range but his nonverbal knowledge score was average. Claimant's qualitative reasoning score was in the borderline range; his visual spatial score was in the average range, and his working

memory score was in the low average range. Dr. Sirolli described Claimant as a “smart boy, who can perform most nonverbal tasks with relative ease” and that his “ability to complete verbal tasks is still his greatest limitation.” (Exhibit 8, p. A69.)

18. Dr. Sirolli administered the ADOS-2 to evaluate whether Claimant had symptoms of autism. She noted Claimant responded to his name immediately, engaged in back-and-forth interactions, and looked when he was shown items. He showed meaningful eye contact throughout the session, did a “great job” during free play, and requested what he wanted by using words and pointing. He exhibited an interest in interacting with others and was able to sit for age-appropriate windows of time. Claimant was also compliant and transitioned to different activities with mild prompting. Dr. Sirolli did not note any sensory seeking or avoiding behaviors. She noted that Claimant’s score on the ADOS-2 was below the autism range.

19. Father completed the Autism Rating Scales. According to Father, Claimant smiled appropriately, played with others, made good eye contact, shared fun activities with others, and played appropriately with toys. Father also reported Claimant did not have any issues with clothes, adjusted to changes and transitions, and did not engage in any unusual or repetitive behaviors. Dr. Sirolli scored Father’s responses and found the scores were inconsistent with an autism diagnosis.

20. Dr. Sirolli found that Claimant’s language skills were in the moderately low range of functioning. Although Claimant followed directions to do two things that go together and used adjectives, Claimant did not yet answer “When” questions, follow directions to do two separate tasks, or use all pronouns or two-part sentences.

21. Dr. Sirolli also found Claimant’s adaptive behavior composite based on the Vineland III to be in the moderately low range of functioning. Claimant’s daily

living skills score reflected an adequate range of functioning. Claimant's scores regarding his sensorimotor functioning were moderately low.

22. Dr. Sirolli reported that Father indicated Claimant likes to play with peers, is empathic, and engages in back-and-forth interactions. Mother told Dr. Sirolli that Claimant is developing well and she is principally concerned about Claimant's continued speech challenges. Ms. Gomez informed Dr. Sirolli that Claimant was doing well in treatment, increased his vocabulary, and behaved in a friendly and cooperative manner. Neither Claimant's parents nor Ms. Gomez reported Claimant exhibited any symptoms of autism.

23. Based on the testing, her observations, and the reports by Claimant's parents and Ms. Gomez, Dr. Sirolli diagnosed Claimant with Language Disorder. She recommended Claimant receive speech therapy from his school district and any other necessary supports. She also noted Claimant might benefit from being reassessed in the future if his symptoms persist or worsen.

24. On June 8, 2023, after reviewing the relevant reports, the WRC eligibility team, consisting of an autism specialist, a physician, a psychology consultant, and a staff psychologist, determined Claimant was not eligible for regional center services because he did not have autism, intellectual disability, or any other qualifying condition under the Lanterman Act. The team echoed Dr. Sirolli's recommendation that Claimant obtain speech therapy from his school district to address his speech difficulties. (Exhibit 9.)

Regional Center Testimony

25. Dr. Kelly testified on behalf of WRC. For the past six years, Dr. Kelly has served as the WRC Director of Clinical Services. He also served as WRC's chief

psychologist and coordinator of intake services. Before joining WRC, Dr. Kelly performed assessments for WRC.

26. Dr. Kelly explained the basis for WRC's denial of Claimant's eligibility for regional center services. Dr. Kelly noted that Claimant's records, reports, and assessments had been reviewed by a WRC multi-disciplinary clinical team. The team determined these materials were not supportive of Claimant being substantially disabled based on a diagnosis of intellectual disability, autism, or any other qualifying condition under the Lanterman Act. Therefore, Claimant was ineligible to receive regional center services. Claimant's diagnosis with a speech and language disorder is not sufficient by itself to qualify him for regional center services.

27. Dr. Kelly additionally explained that providing speech therapy is the responsibility of the school district where Claimant attends school. Claimant's insurance might also fund speech therapy if the school district's services are insufficient to meet Claimant's needs.

Parents' Testimony

28. Mother described Claimant's difficulties in detail. She expressed gratitude for the speech and behavior therapy Claimant received through WRC, but she stated Claimant's language skills remain problematic and he still needs therapy. The therapy Claimant currently receives from his school is insufficient. Mother also now receives telephone calls from Claimant's school about Claimant's behavior and his hitting other students. Additionally, Claimant is not aware of the dangers around him.

29. Father explained Claimant's speech is below average. Father has volunteered in Claimant's classroom during lunch to observe Claimant's interactions. He believes Claimant's speech difficulties lead to physical temper tantrums that

include hitting other students. Father also asserted Claimant's poor communication skills make it difficult for him to express himself and tell his parents about his needs and wants. Because Claimant has difficulty expressing himself, Father believes Claimant takes unnecessary risks and can be a danger to himself.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code (Code), §§ 4710–4714.) Claimant requested a hearing to contest WRC's denial of Claimant's eligibility for services and supports under the Lanterman Act and therefore jurisdiction for this appeal was established.

2. Claimant has the burden of establishing his eligibility for Lanterman Act services and supports by a preponderance of the evidence. (See *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. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324–325 (emphasis in original).) V

Relevant Statutes and Regulations

3. To be eligible for Lanterman Act supports and services, Claimant must present with a qualifying developmental disability. Code section 4512, subdivision (a), defines "developmental disability" as:

[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. . . . [T]his 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.

4. California Code of Regulations, title 17 (CCR), section 54000 similarly defines "developmental disability" as a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectually disabled individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap.

5. A child who is three or four years of age may be provisionally eligible for regional center services even if he does not have any of the qualifying conditions described in Code section 4512, subdivision (a)(1) or CCR section 54000. (Code, § 4512, subd. (a)(2).) The child, however, must have a disability that is not solely physical and must have significant functional limitations in at least two of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, and self-direction.

Analysis

6. Here, Claimant was deemed provisionally eligible for regional center services based on a diagnosis of Mixed Receptive-Expressive Language Disorder. As a provisionally eligible consumer, Claimant received speech and behavior therapy funded through the regional center.

7. The Lanterman Act requires that children demonstrate they have one of five specific developmental disabilities identified in Code section 4512 before they can receive regional center services after they turn five years old. Claimant has not proved by a preponderance of evidence he has any of the five identified conditions. There is no evidence Claimant has epilepsy or cerebral palsy. Based on her testing, observations, report review, and interviews, Dr. Sirolli found Claimant did not have autism, was not intellectually disabled, and did not have a disabling condition related to intellectual disability or require treatment similar to that required for individuals with an intellectual disability.

8. Without proof of an eligible condition at this time, Claimant is no longer entitled to regional center services despite the challenges he experiences. If Claimant's behavioral issues persist or worsen, Claimant is not barred from seeking regional center services at a later date. However, Claimant failed to meet his burden to show by a preponderance of the evidence that he currently has a developmental disability under Code section 4512, subdivision (a)(1). (Factual Findings 1–29.) Accordingly, Claimant is ineligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal is denied. Claimant is ineligible for regional center services under the Lanterman Act.

DATE:

CINDY F. FORMAN

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.