

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

In the Matter of:

CLAIMANT

and

FAR NORTHERN REGIONAL CENTER

DDS No. CS0010180

OAH No. 2023100603

DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acting as a hearing officer, conducted a fair hearing by videoconference on April 8, 2025, from Sacramento, California.

Larry Withers, Associate Director of Client Services, represented Far Northern Regional Center (FNRC).

Lauren Burlingham served as Claimant's non-attorney representative. Claimant was present at hearing.

Evidence was received, the record closed, and the matter submitted for decision on April 8, 2025.

ISSUE

Did FNRC appropriately terminate Claimant's services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

FACTUAL FINDINGS

Jurisdiction

1. Claimant has been receiving services under the Lanterman Act since 1984, shortly after birth. His qualifying diagnosis at the time was a neurological handicap as a result of spina bifida, under the "fifth category" of qualifying developmental disabilities under Welfare and Institutions Code section 4512, subdivision (a).

2. In September 2023, FNRC reassessed Claimant to determine eligibility for services under the Lanterman Act. FNRC's assessment revealed Claimant does not have an intellectual disability, epilepsy, cerebral palsy, autism spectrum disorder, or a diagnosis under the fifth category. On September 29, 2023, FNRC issued a Notice of Action terminating Claimant's services under the Lanterman Act.

3. On October 16, 2023, Claimant filed an appeal request. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent

adjudicative agency of the State of California. After several continuances, the hearing proceeded on April 8, 2025.

Regional Center Services

TRI-COUNTIES REGIONAL CENTER

4. Claimant was born with spina bifida. In January 1984, Tri-Counties Regional Center (TCRC) accepted Claimant as a client under a fifth category diagnosis of neurological disability resulting from spina bifida. Claimant's Client Developmental Evaluation Reports (CDERs) in September 1985 and January and June 1986 state Claimant's qualifying developmental disability was cerebral palsy. The CDERs are blank as to the fifth category.

5. Claimant's February 1987 CDER no longer lists cerebral palsy as a qualifying developmental disability. This CDER states the qualifying diagnosis was under the fifth category. However, the form does not specify what the fifth category diagnosis is.

ALTA CALIFORNIA REGIONAL CENTER

6. In June 1989, TCRC transferred Claimant's case to Alta California Regional Center (ACRC). TCRC's transfer note indicates Claimant has "spina bifida, developmental disability[,] and neurologic handicap." Upon transfer, ACRC's eligibility intake form indicates Claimant's disability as "Spina bifida with shunted hydrocephalus" and states ACRC will reassess eligibility in two years, in 1991. Claimant was not reassessed in 1991.

7. Claimant's CDERs while at ACRC are inconsistent regarding the qualifying diagnosis or diagnoses. In January 1990 and January 2002, Claimant's qualifying

developmental disabilities were listed as mild intellectual disability and a fifth category diagnosis of “other specified delays in development” as a result of spina bifida with hydrocephalus. In June 2002, the only qualifying diagnosis noted was intellectual disability. In February 2014, intellectual disability was no longer listed as a qualifying diagnosis. This CDER indicates a qualifying diagnosis under the fifth category but does not specify what the diagnosis is. There is no evidence of ACRC conducting any eligibility reassessments to account for the changes to the qualifying developmental disabilities indicated in Claimant’s CDERs.

FNRC

8. In early 2014, ACRC transferred Claimant’s case to FNRC. Claimant’s March 2014 CDER indicates his qualifying developmental disability was mild intellectual disability. Under the fifth category, the CDER states “none.”

9. In 2022, Claimant requested funding for a vehicle ramp and an all-terrain wheelchair, and in 2023, Claimant requested funding for ramps to be installed in his home and funding for a vehicle wheelchair lift. FNRC denied these requests because they were not related to Claimant’s qualifying diagnosis of intellectual disability.

10. Claimant appealed FNRC’s denial to fund a vehicle wheelchair lift. Claimant and FNRC resolved the matter at their informal meeting. By letter dated July 12, 2023, FNRC confirmed their agreement for FNRC to fund the vehicle wheelchair lift and for Claimant to undergo an eligibility assessment.

Eligibility Assessment and Service Termination

11. FNRC retained J. Reid McKellar, Ph.D., a clinical psychologist, to conduct a cognitive assessment of Claimant. On August 28, 2023, Dr. McKellar reviewed regional

center records and school records and interviewed Claimant, Ms. Burlingham, and Claimant's service coordinator. Upon conclusion of his assessment, Dr. McKellar wrote a report.

12. Dr. McKellar administered the Adaptive Behavior Assessment System, Third Edition (ABAS-III), which measures adaptive behavior, the conceptual, social, and practical skills that assist a person in functioning in daily life. Claimant's scores on the ABAS-III suggest he has mild to moderate deficits in adaptive behavior.

13. Dr. McKellar also administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV), which measures cognitive capacity. The WAIS-IV's measurement categories are verbal comprehension, perceptual reasoning, working memory, processing speed, and a composite, full scale score. Claimant's scores had "considerable" variation and should be interpreted as relative strengths and deficits.

Claimant's verbal comprehension skills are average and a relative strength. His perceptual reasoning score is in the low average range. His working memory and processing speed scores indicate deficits in these categories, which Dr. McKellar attributes in part to Claimant's lack of fine motor skills instead of his true cognitive ability.

14. Considering Claimant's school records, which indicated below average to average range of achievement scores and Claimant's ABAS-III and WAIS-IV scores, Dr. McKellar concluded Claimant has a learning disability, not an intellectual disability or Borderline Intellectual Functioning. FNRC relied on Dr. McKellar's assessment in determining to terminate Claimant's services under the Lanterman Act. As of February 2025, Claimant's CDER still states his qualifying diagnosis is mild intellectual disability.

FNRC's Evidence

TESTIMONY OF ROBERT BOYLE, PH.D.

15. FNRC retained Robert Boyle, Ph.D., a clinical psychologist, to conduct another cognitive assessment of Claimant. On May 23, 2024, he interviewed Claimant and Ms. Burlingham and reviewed records, including Dr. McKellar's report. Dr. Boyle also administered the ABAS-III and WAIS-IV. Upon conclusion of his assessment, Dr. Boyle wrote a report. He testified at hearing consistent with his report. He testified his findings were similar to Dr. McKellar's.

16. Claimant's ABAS-III scores suggest significant adaptive deficits in functional academics, home living, leisure, self-direction, and social and borderline adaptive deficits in community use and self-care. His WAIS-IV scores showed low average skills in verbal comprehension and perceptual reasoning. Claimant's scores in working memory and processing speed were borderline. Based on Claimant's scores, Dr. Boyle concluded Claimant's intellectual abilities are on the whole in the low average range.

17. In reviewing Claimant's records, Dr. Boyle did not find an assessment or testing for an intellectual disability or a fifth category diagnosis such as Borderline Intellectual Functioning. School records during the developmental period of 0 to 18 years of age indicate average scores in achievement testing, and his academic scores were not significantly below average. Dr. Boyle concluded Claimant's overall intellectual abilities are in the low average range and suspects he may suffer from a specific learning disability. However, Dr. Boyle concluded Claimant does not suffer from an intellectual disability or a fifth category diagnosis such as Borderline Intellectual Functioning.

18. Prior to starting his private practice, Dr. Boyle was a staff psychiatrist at FNRC. In that capacity, he conducted psychological, cognitive, and forensic assessments and served as a member of the eligibility review committee. As a result, he is familiar with assessing eligibility for services under the Lanterman Act. According to Dr. Boyle, regional centers in the past considered spina bifida a qualifying diagnosis for Lanterman Act services. However, as the science and understanding of spina bifida have evolved, spina bifida is no longer considered a qualifying diagnosis. Dr. Boyle has never seen an applicant be found eligible solely on the basis of a spina bifida diagnosis.

TESTIMONY OF TAMRA PANTHER

19. Tamra Panther is an Associate Director of Client Services at FNRC, where she has worked for over 30 years. Previously, she has been a service coordinator and a case management supervisor. Ms. Panther is familiar with assessing eligibility for services under the Lanterman Act. She testified at hearing.

20. Ms. Panther has never seen an applicant be found eligible solely on the basis of a spina bifida diagnosis. However, she has seen applicants who suffered from an intellectual disability as a result of spina bifida found eligible. This is not the case with Claimant. No assessment or testing in his records shows that his spina bifida resulted in an intellectual disability.

21. Ms. Panther explained the regional center practice around the time Claimant was initially found eligible. During that time, regional centers accepted as clients child applicants with spina bifida, and regional centers scheduled assessments within a specified timeframe to see how spina bifida may have affected the child's development. Consistent with that, when Claimant's case was transferred to ACRC in

1989, the regional center made a note to reassess his eligibility after two years. However, that reassessment did not occur, and Claimant's first reassessment was in 2023. Ms. Panther believes Claimant's case "fell through the cracks."

22. Approximately 15 years ago, FNRC's practice changed. Now, FNRC complies with statutory deadlines to determine eligibility soon after application for services. Regional centers are now able to provisionally accept an applicant as an eligible client up to six years of age, with a reassessment scheduled. If the reassessment determines a client is eligible, the provisional designation is removed.

23. Ms. Panther testified CDERs are not reliable for the purpose of determining eligibility because they are "not eligibility tools." Instead, CDERs are "snapshots of the best available information" a regional center has at a given time. Service coordinators complete CDERs. However, recently, FNRC changed its practice so only clinical staff are permitted to complete the diagnosis section of the CDER.

Claimant's Evidence

24. Ms. Burlingham testified. According to her, Claimant does not dispute Drs. McKellar and Boyle's opinions that he does not suffer from an intellectual disability. Claimant also concedes he does not have a diagnosis that qualifies him for services under the Lanterman Act. However, Claimant is disheartened that it took almost 40 years to assess his eligibility. For 40 years, he saw himself as intellectually disabled although this label was not consistent with how he knew himself to be. This experience was difficult for Claimant. While he is relieved that FNRC admitted his case "fell through the cracks," Claimant would like procedural safeguards implemented to prevent others from experiencing the same challenges.

Analysis

25. 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 distinct categories: (1) intellectual disability; (2) cerebral palsy; (3) epilepsy; (4) autism; or (5) a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability (fifth category). Here, it is undisputed Claimant does not suffer from a developmental disability that qualifies him for services under the Lanterman Act.

26. The evidence shows Claimant's case "fell through the cracks," and his first eligibility reassessment was conducted in 2023, almost 40 years after he was initially accepted as a regional center client. Claimant's qualifying diagnosis indicated in the regional centers' records, particularly the CDERs, changed over the years without medical documentation. Claimant's struggle with his self-image, in light of the erroneous and evidently unsupported diagnosis of intellectual disability, as reflected in the regional centers' records, is unfortunate. Regional centers should be diligent in their assessment of clients and recordkeeping to prevent other cases "f[a]ll[ing] through the cracks" in the future.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, regional centers are responsible for providing or coordinating services for persons with developmental disabilities. A developmental disability is defined 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. 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.

(Welf. & Inst. Code, § 4512, subd. (a)(1).)

2. FNRC bears the burden of proving by a preponderance of the evidence that Claimant's services under the Lanterman Act must be terminated based on his ineligibility. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. It is undisputed Claimant does not have an intellectual disability or any other diagnosis that would qualify him, under Welfare and Institutions Code section 4512, subdivision (a), for services under the Lanterman Act. A preponderance of the evidence shows Claimant's regional center services must be terminated as a result of his ineligibility. Thus, Claimant's appeal must be denied.

ORDER

Claimant's appeal of Far Northern Regional Center's termination of services under the Lanterman Act to Claimant is DENIED. The eligibility determination is AFFIRMED.

DATE: April 15, 2025

PATRICE DE GUZMAN HUBER
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 under Welfare and Institutions Code section 4713, subdivision (b), 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.