

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

In the Matter of:

CLAIMANT

vs.

NORTH BAY REGIONAL CENTER, Service Agency.

DDS Case No. CS0011451

OAH No. 2024010039

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, served as the hearing officer and heard this matter on March 22, 2024, in Napa, California.

Claimant was represented by her sister-in-law. Claimant was not present.

Beth DeWitt, Director of Client Services, represented North Bay Regional Center, the service agency.

The matter was submitted for decision on March 22, 2024.

ISSUE

Did North Bay Regional Center (NBRC) improperly deny an assessment of claimant for regional center eligibility at the intake screening stage?

FACTUAL FINDINGS

Introduction

1. Claimant is 62 years old. She lives with her husband, who receives services from NBRC. The service coordinator for claimant's husband referred claimant to NBRC in November 2023 for a concern of intellectual disability, requesting an evaluation of claimant's eligibility for regional center services. Claimant was represented at hearing by her sister-in-law, who is the sister of claimant's husband.

2. An NBRC intake staff person completed an intake referral form on November 8, 2023.

3. On December 14, 2023, NBRC issued a notice of action, denying additional assessment of claimant for the purpose of making an eligibility decision, and contending that the information presented by claimant does not support the suspicion that she had a qualifying condition prior to the age of 18.

4. Claimant filed an appeal request on December 21, 2023, with the assistance of her sister-in-law.

5. An informal meeting was held on January 31, 2024, between claimant's sister-in-law and NBRC representatives. NBRC did not change its determination.

6. After the appeal was filed, NBRC learned that claimant was previously assessed in 1992 by the Regional Center of the East Bay (RCEB), which found claimant did not meet the eligibility requirements for regional center services. NBRC obtained and reviewed documents from the 1992 RCEB assessment, but did not change its decision to deny further assessment.

Eligibility Requirements for Regional Center Services

7. The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.,¹ provides assistance to individuals with five specified developmental disabilities: intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly called the “fifth category” of conditions that are closely related to intellectual disability or that require treatment similar to that required for an individual with an intellectual disability. (§ 4512, subd. (a).)

8. To be considered an eligible developmental disability under the Lanterman Act, the condition must arise before the age of 18, must continue or be expected to continue indefinitely, and must constitute a substantial disability for the person. (§ 4512, subd. (a).) “Substantial disability” means significant functional limitations in three or more areas of major life activity (receptive and expressive language, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency). (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

¹ All statutory references are to the Welfare and Institutions Code.

9. Regional centers refer to the diagnostic criteria in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) in determining eligibility under the Lanterman Act. The current version is the DSM-5-TR (Fifth Edition, Text Revision), published in 2022. The essential features of intellectual disability (also referred to as "intellectual developmental disorder" in the DSM-5-TR) are: deficits in intellectual functions confirmed by clinical assessment and standardized intelligence testing; impairment in adaptive functioning in comparison to peers in one or more activities of daily life across multiple environments; and onset in the developmental period. The DSM-5-TR's discussion of diagnostic features notes that individuals with intellectual disability have intelligence test scores of approximately two standard deviations or more below the mean, corresponding to an IQ score of no more than 65 to 75 (a score of 70, plus or minus a 5-point margin for measurement error).

Previous Assessment by RCEB

10. On June 18, 1992, RCEB received an intake inquiry, and staff completed a one-page form with brief information received from claimant. At that time, claimant was 31 years old.

11. RCEB assessment counselor Mindy Lee, M.S.W., completed a social assessment of claimant on July 10, 1992, and reported the following information obtained from interviewing claimant and claimant's mother.

Claimant is the fourth of five children in her family, and her older sister is a regional center client (described at that time as having mild "mental retardation," a term which has now been replaced by intellectual disability). Claimant's parents lived in Pleasant Hill. In May 1992, claimant had moved out of her parents' home and into

an apartment with her older disabled sister in Walnut Creek. (Claimant had thus been living independently for about two months at the time of this social assessment.)

Claimant was born after a full-term pregnancy. Her parents first became concerned about claimant's development when she turned two years old, because she was "slower" than her peers. Her mother described that although claimant could eventually learn skills, it took longer for her to master them. Claimant's mother did not recall much about claimant's early developmental milestones, except that she started talking between ages two to four. Claimant repeated kindergarten. Her teacher described claimant as "slow in learning and having a bad temper." Claimant was referred to Stanford for evaluation. Her mother reported that the result did not indicate a delay in development but that claimant was "slow in learning." Lee wrote that according to claimant's mother, claimant "remained 'in the same class but with [a] different group,' not exactly placed in a special education class however." Claimant graduated from John F. Kennedy High School in Fremont. She then attended classes at Ohlone College but had to repeat classes several times because they were too difficult.

During the previous four to five years, claimant had been working at Abco Labs in Concord, packing medications. She obtained this job through the Department of Rehabilitation. Claimant had a driver's license and drove to work, but only on local streets because "the highway is too scary." Claimant stated she would like to have a job with higher pay and receive assistance in budgeting her money.

Claimant shared household chores with her sister, and did grocery shopping and cooked meals for herself. She reported being independent with personal hygiene. Claimant mostly stayed home during leisure time, but she expressed a desire to meet men with whom she could go out and build up friendships. She described herself as shy and friendly, but stated that when things "do not go right" she becomes easily

upset and irritable. Lee reported that claimant was able to maintain direct eye contact while talking, but that she appeared to be nervous being with strangers as both her hands constantly trembled slightly throughout the interview. (The RCEB Inquiry Form also contains notes stating, "I'm a little nervous" and "I shake a lot around people.")

Claimant reads and writes but has poor reading comprehension. She needs repetitive prompting before she can correctly follow a verbal instruction. Lee reported that claimant could engage in complex conversation, freely express her opinions and feelings, and that she slurs slightly but her speech is understandable.

12. After conducting the social assessment, RCEB closed the referral with a finding of insufficient information to document a developmental disability. However, an addendum was included on January 8, 1993, noting that after RCEB staff closed the referral, they received the psychological report described in Factual Finding 13, and that RCEB would assess that new information.

13. Psychologist Myles R. Friedland, Ph.D., wrote a psychological report dated December 11, 1992, after performing psychological testing of claimant on October 1, 1992. In the background section of the report, Dr. Friedland noted that claimant had attended a combination of special education and regular classes. He also referred to the social assessment conducted by Lee (Factual Finding 11).

Dr. Friedland conducted a mental status examination of claimant, and also noted information conveyed by claimant about her mood, feelings, and activities. Claimant stated she had been receiving counseling "since last April."

Dr. Friedland administered the Wechsler Adult Intelligence Scale – Revised (WAIS-R) and claimant's scores were a verbal IQ of 77 (borderline range), a performance IQ of 91 (low average range), and a full scale IQ of 80 (low average

range). Based on a significant discrepancy between the verbal and performance subscales, Dr. Friedland found claimant had a learning disability. He also administered the Wide Range Achievement Test, and claimant's grade-level equivalent scores were Reading 7B, Spelling 6E, and Arithmetic 6E.

Dr. Friedland diagnosed claimant with Axis I Adjustment Disorder of Adult Life with mixed emotional features and Axis II Specific Developmental Disorder Not Otherwise Specified (mixed learning disabilities). He opined that claimant "does not have a condition similar to mental retardation which requires treatment similar to individuals with mental retardation." Dr. Friedland concluded that claimant was not eligible for regional center services.

Dr. Friedland's recommendations were that claimant continue with counseling, and obtain a re-referral to the Department of Rehabilitation if needed in the future for job placement.

14. On January 14, 1993, RCEB sent claimant a letter stating that the assessment team had determined she did not have a diagnosis of an eligible developmental disability, and recommended that claimant continue with routine medical follow up, continue with counseling, and maintain the job arranged through the Department of Rehabilitation.

15. Claimant did not request a fair hearing after RCEB's determination she was not eligible for regional center services.

NBRC Intake Screening of Claimant

16. It does not appear that NBRC staff spoke directly with claimant as part of the intake process.

17. Claimant was referred to NBRC by Heidi Oestreich, the service coordinator for claimant's husband. A page in the Intake Inquiry Packet states that claimant is suspected of having intellectual disability. Written in the space for concerns about claimant's ability to learn is: "[Claimant] receives assistance from in-laws with bill paying, budgeting, correspondence. Husband client of NBRC and unable to assist." Written in the space for concerns about claimant's ability to perform age-appropriate skills independently is: "Needs assistance from family to maintain independent living. Husband receives ILS [Independent Living Skills] and helps w[ith] issues. SC, ILS, and family all believe ID."

18. The NBRC Intake Referral Form reflects that a referral was taken from Oestreich on November 8, 2023, by Erika Dominguez. The information on the form about the reason for the referral states the following. Claimant was referred for a concern of ID. She graduated from high school with a diploma, did not receive special education services, and went to college but did not graduate. She has been at her current job for over 34 years, packaging medications. She is able to drive herself to and from work, but is unable to drive long distances on her own. She does not need reminders for personal hygiene, she is independent. She can cook, clean, and pick up after herself but has required some help at points. Claimant needed assistance managing her rent payments, and her mother would assist but her sister-in-law is assisting her now. The sister-in-law noticed claimant is having a hard time remembering things. "It is unknown when this started but it's been recently." According to her sister-in-law, claimant recently started feeling overwhelmed, stressed, and unable to focus at work, and she is thinking of early retirement.

Testimony of NBRC Staff Regarding Claimant's Intake

INTAKE MANAGER

19. Guadalupe Lopez testified at hearing. Lopez has worked at NBRC since 2008, formerly as a service coordinator, and since 2016 as manager of the intake department. Lopez reviewed claimant's intake referral and intake packet. She asked Dominguez if there was any more information to review dating from before the time claimant reached the age of 18, and there was not. Lopez closed the referral without recommending further assessment and issued a notice of action that insufficient information supported a suspicion of developmental disability prior to age 18.

20. After claimant's appeal was received, Lopez spoke to Oestreich about claimant and realized that she had only searched the statewide regional center database for claimant's current name. Lopez searched using claimant's maiden name and learned that RCEB had previously assessed claimant and denied eligibility.

21. As of the informal meeting, Lopez did not have a copy of the RCEB file. When Lopez received the file from RCEB, she consulted with NBRC's psychologist and asked him to review the RCEB psychological report and provide his input.

PSYCHOLOGIST

22. Todd Payne, Psy.D., testified at hearing. Dr. Payne is a psychologist who has worked in the NBRC intake department for over 20 years. In his testimony, Dr. Payne summarized the eligibility criteria for regional center services.

23. Dr. Payne reviewed the RCEB assessment of claimant, including Dr. Friedland's 1992 psychological evaluation. He looked to see if there was anything unusual or concerning about the tests administered (such as using an outdated test

version) or if the interpretation was based on information that is not within the professional community standard. Dr. Payne did not see anything that looked in error.

Dr. Payne noted that the testing revealed a full scale IQ of 80, which is the lower end of “low average,” and is above the range of scores for intellectual disability. There is no cutoff number for an assessment of a fifth-category condition, but he stated that an IQ score of 80 would be very unusual for such a condition. Dr. Payne explained that the DSM-5-TR criteria for intellectual disability allow for some clinical judgment. As in prior versions of the DSM, a diagnosis of intellectual disability would typically require a full scale IQ of approximately 70 or lower, with consideration of factors such as test measurement error and that tests are approximations.

Dr. Payne also noted that the brief academic testing conducted by Dr. Friedland showed results at a sixth to seventh grade level, which was below expectations for claimant’s age, and that Dr. Friedland had diagnosed a learning disability. However, learning disabilities are not eligible conditions for regional center services.

Claimant’s Additional Evidence

24. Claimant’s sister-in-law obtained a copy of claimant’s high school transcript. The transcript was not received until after the informal meeting, and it does not appear to have been considered by NBRC staff. The transcript reflects that claimant graduated in 1980 at age 19, with a cumulative grade point average of 1.965. It appears from the course listing that claimant took remedial reading classes in ninth grade, and that she repeated some classes.

TESTIMONY OF CLAIMANT'S SISTER-IN-LAW

25. Claimant's sister-in-law testified at hearing. She believes claimant should be eligible for regional center services, and that claimant functions similarly to a person with a developmental disability.

26. Claimant's sister-in-law has known claimant for about 30 years, although she did not know claimant prior to age 18. Claimant reportedly was assessed at Stanford during childhood but her sister-in-law does not have those records. School records show she repeated classes. Claimant's parents are now deceased. Claimant's sister-in-law contacted claimant's older brother seeking more information, but he declined to assist. The only sibling with whom claimant is in contact is her disabled older sister (a regional center client).

27. Claimant has been able to present herself as capable. However, claimant's sister-in-law reports that claimant will say "yes she can" to questions about her abilities, even if that is not necessarily accurate. Claimant's sister-in-law believes that claimant has always struggled with daily tasks, but that it became more apparent when the sister-in-law observed her more closely in recent years.

28. Claimant has poor social skills, and has no friends other than her disabled older sister, husband, and her sister-in-law.

29. Claimant held a job for 34 years, working in a repetitive, minimum-wage position, packaging ingredients. Claimant obtained that job through the Department of Rehabilitation. Her sister-in-law spoke to claimant's job supervisors, who said they were never able to advance her, but they were not willing to submit anything in writing. Claimant retired at the end of last year, having become very stressed working.

30. Claimant drives, but unless she has been to a location repeatedly she cannot get there alone. Claimant was supposed to come to a meeting at NBRC, but instead she drove to a clinic or hospital called "North Bay" located in another city.

31. Claimant has been married for 26 years. Before claimant was married, she lived in an apartment with her disabled sister, and went along with that sister to community activities, which is where claimant met her husband.

32. When claimant and her husband were first married, claimant's mother bought the couple a mobile home, so that they only had to pay rent for the land. Claimant's mother handled payment of rent for the couple until her death. Claimant's sister-in-law came over periodically to check on the couple.

33. About 10 years ago, claimant's sister-in-law came to visit and was told by the couple's landlord that claimant and her husband owed a large sum in back rent and were in danger of being evicted. Claimant's sister-in-law helped the couple sell their mobile home and catch up on paying their credit card bills. The couple lived in the sister-in-law's home for almost five years, before she found them housing at a residence for seniors.

34. Claimant's sister-in-law manages all of claimant's finances and handles payment of claimant's bills. Claimant has no checking account. Claimant is not able to perform tasks such as calling utility providers. When claimant and her husband moved, claimant's sister-in-law had to call to get the water bill changed because claimant was not able to do it despite prompting.

35. Claimant's ability to cook is limited, and claimant's husband likes to cook, so claimant's sister-in-law comes over to help guide and supervise them in cooking.

36. Claimant needs reminders to perform personal hygiene tasks. She wears the same clothing every day. When claimant's sister-in-law was helping claimant move, she realized claimant only had one pair of pants, and insisted that claimant obtain a second pair of pants in order to have a spare to launder. If claimant receives gifts she may donate the items to charity rather than using them.

TESTIMONY OF OESTREICH

37. Oestreich has worked as a service coordinator at NBRC for 28 years, and has been working with claimant's husband for about three years. When she met claimant, Oestreich was quite surprised to learn claimant is not a regional center client, as were other service providers who work with claimant's husband. In Oestreich's opinion, claimant's functional ability is similar to a person with a developmental disability, and she believes claimant may be eligible under the fifth category.

38. Claimant is very proud and strives to be independent, but her functional skills are lacking. Oestreich believes that if it were not for the help claimant receives from her sister-in-law, claimant would not be able to live independently. Claimant's parents formerly helped both claimant and her disabled sister.

39. Claimant can drive but cannot go anywhere new without getting lost. She moved from American Canyon to Fairfield and now gets lost frequently.

40. Oestreich asked about claimant's abilities prior to age 18. In the prior assessment claimant's mother reported claimant had always been "slow," and claimant has told Oestreich the same thing.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for people with developmental disabilities under the Lanterman Act. (§ 4500, et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services, and to enable people with developmental disabilities to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *A.R.C. v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term "developmental disability" includes intellectual disability, cerebral palsy, epilepsy, autism, and the fifth category. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

3. Any person believed to have a developmental disability shall be eligible for initial intake and assessment services in the regional centers. (§ 4642, subd. (a)(1).) Initial intake shall be performed within 15 working days following the request, and shall include a decision whether to provide assessment (§ 4642, subd. (a)(2).)

4. Claimant's sister-in-law believes that the 1992-93 RCEB assessment of claimant is not an accurate representation of claimant, and objects that NBRC did not interview claimant during its intake process.

5. NBRC contends that it met its obligation to conduct the intake process, and that it appropriately closed this referral without conducting a further assessment. This position is based on the premise that there was no new information from the

developmental period. However, it appears that NBRC did not review or consider the recently obtained high school transcript.

6. Under these circumstances, claimant has established that further assessment by NBRC is warranted.

ORDER

Claimant's appeal is granted. NBRC shall provide an assessment of claimant to determine whether she is eligible for regional center services.

DATE:

HOLLY M. BALDWIN

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.