

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

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0013602

OAH No. 2024040033

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter at the Westside Regional Center (RC or Regional Center), in Culver City, on June 25, 2024.

Kirsten Davis, Appeals and Regulations Specialist, represented RC.

L.M., Claimant's mother (Mother), represented Claimant. Initials are used to protect the privacy of Claimant's family.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on June 25, 2024.

ISSUE

Whether Claimant is eligible to receive services from RC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED ON

Exhibits 1-14, Testimony of Mother, Exhibits A-1 and A-2.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 14-year-old male who has requested services from RC.
2. On March 11, 2024, RC sent a "Notice of Action" letter to Claimant notifying him he was found ineligible for RC services. RC concluded that Claimant has a qualifying diagnosis of autism, but that he is not "substantially disabled" by his autism, as is required by Welfare and Institutions Code (Code) section 4512, subdivision (l), and California Code of Regulations (CCR), title 17, section 54001. All further references to the CCR are to title 17 unless otherwise stated.
3. On March 18, 2024, Claimant appealed RC's decision to deny eligibility and submitted a Fair Hearing Request (FHR).

RC's Evaluation of Claimant

4. In January 2024, Claimant was evaluated by RC for eligibility to receive services and supports. Claimant was evaluated by Miguel Rodriguez-Cortes, Psy.D (Registered Psychological Assistant) and Gabrielle du Verglas, Ph.D. (Clinical Psychologist) (Verglas). Verglas diagnosed Claimant as having autism spectrum disorder with impairment in social communication and interaction, and repetitive restrictive activities. Verglas opined that both areas of impairment require substantial support.

5. On February 8, 2024, a RC multidisciplinary team met to consider Claimant's eligibility. The team included a neurologist, a psychologist, and several counselors. The multidisciplinary team determined Claimant was not eligible to receive services.

6. For Claimant to be eligible to receive services from RC, he must have a qualifying diagnosis which results in substantial disability in three or more of the major life activities.

7. Pursuant to Code section 4512, subdivision (l), the term "substantial disability" means significant functional limitations in three or more of the following areas of major life activity: Self-care, Receptive and Expressive language, Learning, Mobility, Self-direction, Capacity for independent living, and Economic self-sufficiency. The regional center determines whether a significant functional limitation exists for each category, as appropriate to the age of the person.

8. In this case, RC concluded that Claimant has a qualifying diagnosis of autism spectrum disorder. However, RC also found that Claimant's autism spectrum disorder does not result in "substantial disability" in at least three areas of major life activity. Therefore, RC concluded that Claimant is not eligible to receive services.

Other Findings

9. Claimant has previously received special education services from his school district. Claimant is currently attending a general education class because Mother believed Claimant was regressing while attending a special education class.

10. Mother offered three of Claimant's past Individualized Education Program plans as evidence. Mother also offered her written statement (Exhibits A-1 and A-2) and her testimony. Mother believes Claimant is substantially disabled in the areas of Receptive and Expressive language, Self-Care, and Independent Living.

11. Claimant forgets to lock the door to his home, and he tends to wander away when out in public. Mother testified Claimant requires constant guidance and supervision in Self-Care and that Claimant cannot act independently. Claimant has difficulty understanding the true meaning of words being spoken to him. Claimant struggles to engage in conversation and to stay on topic. Mother is concerned with Claimant's well-being and hopes that Claimant can be independent in the future.

12. RC's psychosocial report (Exhibit 2) paints a different picture of Claimant's abilities. RC's report states that Claimant can perform many acts of Self-Care and Independent Living, although Claimant does require reminders. These include brushing his teeth, brushing his hair, washing himself, using the bathroom by himself, eating and drinking by himself, an ordering independently from a menu at a restaurant. RC's report was based on information provided by Mother. Mother's testimony regarding Claimant's abilities in the areas of Self-Care and Independent Living, conflicted with RC's report. The evidence presented did not explain the apparent discrepancy. Both RC's report and Mother's testimony were given equal weight.

13. In this case, RC was unable to offer any testimony from a medical doctor. Based on Verglas' report, Claimant is substantially disabled in the area of Receptive

and Expressive language. As to the areas of Self-Care and Independent Living, the evidence is in conflict and did not establish that Claimant is substantially disabled in these areas.

LEGAL CONCLUSIONS

1. The Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) provides a framework for the provision of services and supports to individuals with developmental disabilities.

2. Individuals who disagree with regional center determinations, such as in this case, may appeal the determination through a fair hearing process. (Welf. & Inst. Code, §§ 4700-4716, and Cal. Code Regs., tit. 17, §§ 50900-50964).

3. Because Claimant seeks to establish his eligibility for services, he bears the burden to demonstrate his eligibility, and that the RC's decision to deny eligibility is incorrect. (See Evid. Code §§ 115.)

4. Welfare and Institutions Code (Code) section 4512, subdivision (a), defines a developmental disability as ". . . a disability which originates before an individual attains age 18; continues or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." The sole qualifying disabilities are: "intellectual disability, cerebral palsy, epilepsy, and autism. . . [and] 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." (*Id.*)

5. In determining eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and 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.) In this case, RC assessed Claimant for eligibility and reviewed all information submitted by Claimant.

6. Claimant's Mother presented as sympathetic, credible, and a zealous advocate for Claimant. Mother is understandably concerned about obtaining whatever assistance is available to help Claimant.

7. Claimant did not establish RC's decision finding him not eligible for Lanterman Act services and supports is incorrect. While Claimant has a qualifying diagnosis of autism spectrum disorder, the evidence did not establish that Claimant suffers substantial disability in three or more major life activities, which is required before Claimant can be found eligible to receive RC services. Claimant only established he is substantially disabled in the area of Expressive and Receptive Language.

8. Therefore, RC's determinization must be upheld at this time. However, if the inconsistent evidence noted above is clarified by the parties, or if additional relevant information becomes available, or if Claimant's situation changes, Claimant may request that RC re-evaluate Claimant for eligibility and consider all available information at that time.

9. For all the above reasons, RC's decision is affirmed.

ORDER

1. Claimant is not currently eligible for regional center services and supports, pursuant to the Lanterman Developmental Disabilities Services Act.
2. Claimant's appeal of RC's denial of eligibility is denied.

DATE:

CHRIS RUIZ

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.