

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

In the Matter of:

CLAIMANT,

vs.

**Frank D. Lanterman Regional Center,

Service Agency.**

DDS No. CS0018974

OAH No. 2024070194

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter on August 20, 2024, in Los Angeles, California.

Claimant's uncle and authorized representative (Uncle) appeared on behalf of Claimant, who was present. (Titles are used to protect the privacy of Claimant and his family.)

Becky Lam, Assistant Director of the Individuals with Disabilities Education Act Implementation for the Frank D. Lanterman Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on August 20, 2024.

ISSUES

Whether the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) required Service Agency to proceed with an assessment of Claimant. (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

Whether Claimant has a developmental disability as defined by the Lanterman Act.

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 5, and 8.

Testimony: Michele Johnson, Service Agency's Intake Manager; Claimant; Cousin.

SUMMARY

Claimant is 49 years old and suffered a traumatic brain injury (TBI) approximately 12 years ago. Claimant did not have a diagnosis of, or concerns

regarding, a developmental disability before he was 18 years old. Before his TBI, Claimant's mobility and cognitive functioning were not limited; he completed his education and maintained employment without services. Since his TBI, Claimant requires assistance with activities of daily living and his memory is poor. He seeks regional center services to provide him opportunities to find community and engage in activities.

Service Agency conducted an intake referral meeting with Claimant and Uncle and reviewed Claimant's January 2024 neuropsychological assessment conducted by Kaiser Permanente. Because there was no evidence Claimant had a developmental disability before he was 18 years old, Service Agency did not proceed with an assessment and denied Claimant's request for eligibility under the Lanterman Act. Claimant appealed Service Agency's refusal to conduct an assessment and its denial of Claimant's request for eligibility. However, Service Agency's decisions to not complete an assessment of Claimant and to deny his request for eligibility are supported by the Lanterman Act. Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 49 years old and resides by himself. In 2012 Claimant suffered a TBI as a result of a motor vehicle accident involving a drunk driver. Claimant was in a coma for over three months and was not expected to live. Claimant did not achieve a full recovery. Rather, as a result of his TBI his mobility, memory, and ability to complete daily life activities are limited.

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2. On June 3, 2024, Claimant submitted an intake application for regional center services. Specifically, Claimant sought eligibility so he could receive social and community related services, such as participation in an adult day program.

3. On June 20, 2024, Service Agency issued a Notice of Action (NOA) denying Claimant's request for eligibility under the Lanterman Act.

4. On July 1, 2024, Claimant submitted a timely Request for a Fair Hearing.

Claimant's Evidence

5. During Claimant's June 3, 2024 intake phone call with Service Coordinator (SC) Lourdes Tabullo, Claimant and Uncle provided SC Tabullo Claimant's developmental, cognitive, educational, mental health, and medical history. Claimant graduated high school and attended two years of junior college, after which he attended air conditioning school and worked for his father's air conditioning business. Claimant did not have concerns regarding, and was not diagnosed with, a developmental disability before he was 18 years of age. Claimant did not receive special education or other assistive services during his minority. Claimant was diagnosed with bipolar disorder and depression when he was in his 30s, which he now treats with medication. As a result of his TBI, Claimant receives Social Security benefits and In-Home Health Services to assist him with daily activities.

6. On January 19, 2024, Deborah Lu-Lin Leong, Ph.D., of Kaiser Permanente's Clinical Neuropsychology Department, conducted a neuropsychological assessment of Claimant. Dr. Leong administered a series of tests which assessed Claimant's cognitive and intellectual functioning, memory, attention, visual, language and verbal abilities, and executive and emotional functioning. These tests assessed

Claimant's current functioning in these areas, as a 49-year-old man, after suffering a TBI, and did not assess Claimant's functioning before he was 18 years old.

7. Based on her interview and assessments of Claimant, Dr. Leong did not report Claimant experienced any developmental, cognitive, educational, mental health, or medical concerns before he was 18 years old. Dr. Leong reported Claimant's intellectual and adaptive challenges occurred after Claimant's TBI. Claimant reported, and the results of his assessments supported, that since his TBI he struggles with memory, socialization, and performing activities of daily living; he cannot work and he requires assistance bathing and dressing and preparing meals.

8. Uncle has been Claimant's primary support since the TBI. He is concerned about Claimant's well-being, both cognitively, physically, and emotionally. Uncle has witnessed Claimant's ability to perform activities of daily living decline and notes that unless he or other family members take Claimant out into the community, Claimant stays home all day with nothing to do. Uncle has spent much time searching for services to assist claimant, such as Campbell House or Creative Minds, agencies which provide day programs to adults with developmental disabilities; however, they have been repeatedly turned away because Claimant is not a regional center client. Uncle wants to find a place where Claimant can find community and spend time with others.

9. Claimant agreed with Uncle. He explained he lives alone, and other than seeing Uncle and a few other family members, who live about one mile away, Claimant does not see anyone. Claimant cannot drive and walks using the support of a walker. Claimant's primary activity is going to a local market and donut shop, which he does infrequently. Claimant would like to have a place to go and things to do.

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Service Agency's Intake of Claimant

10. On June 3, 2024, SC Turbullo met with Claimant and Uncle by phone and conducted an initial intake of Claimant. On June 12, 2024, Service Agency's Multidisciplinary Team (MDT) met and reviewed Claimant's intake and Dr. Leong's neuropsychological assessment. (Exhs. 3 & 5.) As documented in its Intake Request (Exh. 4), Service Agency's MDT concluded that because Claimant did not have a developmental disability before he was 18 years old his referral could not proceed to assessment. Service Agency's Intake Manager Michele Johnson was present at the MDT meeting and testified at hearing. She added that a second basis for the MDT's decision to not proceed with an assessment of Claimant was that the Lanterman Act precludes eligibility for handicapping conditions that are solely psychiatric, learning, or physical in nature.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-4.)

Burden and Standard of Proof

2. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof to establish they have the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence

Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

Lanterman Act Intake and Assessment Requirements

DEFINITION OF DEVELOPMENTAL DISABILITY

3. A developmental disability is a disability that originates before an individual turns 18 years old. (§ 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (b)(1).)

4. The disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, Autism Spectrum Disorder, Intellectual Disability, or "5th category," a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000.)

5. A condition is not a developmental disability if it is solely psychiatric, learning, or physical in nature. (Welf. & Inst. Code, § 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (c).) Conditions which are solely physical in nature include 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).)

INTAKE AND ASSESSMENT

6. Section 4642, subdivision (a), describes the Lanterman Act intake process:

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(1) Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional centers

(2) Initial intake shall be performed within 15 working days following request for assistance. Initial intake shall include . . . information and advice about the nature and availability of services provided by the regional center and by other agencies in the community Intake shall also include a decision to provide assessment.

7. Section 4643 describes the Lanterman Act assessment process and provides the following:

(a) If assessment is needed, the assessment shall be performed within 120 days following initial intake. . . . Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b).

Analysis

8. Pursuant to the Lanterman Act, not every individual who participates in the initial intake process will be assessed for regional center services. (§§ 4642, subd. (a)(2), 4643, subd. (a).) Rather, a regional center may decide based on the initial intake

performed pursuant to section 4642 whether to complete an assessment pursuant to section 4643. (Legal Conclusions 6 & 7.)

9. Claimant failed to establish cause exists under sections 4512, subdivision (a)(1), 4642, or 4643, or California Code of Regulations, title 17, section 54000, subdivision (b)(1), for Service Agency to conduct an assessment of Claimant. Claimant did not assert and provided no information tending to show he had any developmental, cognitive, educational, mental health, or medical concerns or limitations before he was 18 years old. Rather, Claimant sought regional center services based on the effects of his TBI which he suffered when he was approximately 38 years old. (Factual Findings 5-10.)

10. Although Claimant's TBI has limited his cognitive functioning, mobility, and his ability to socialize, these limitations did not occur before Claimant was 18 years old, thereby precluding the TBI, or its resulting limitations, from constituting a developmental disability under the Lanterman Act. (§§ 4512, subd. (a)(1); Cal. Code Reg., tit. 17, § 54000, subd. (b)(1).) In addition, Claimant's limitations are the result of his TBI caused by a motor vehicle accident, and are not the result of a neurological impairment, further precluding Claimant from eligibility under the Lanterman Act. (Cal. Code Reg., tit. 17, § 54000, subd. (c)(3).) (Factual Findings 5-10.)

11. Based on the information presented to Service Agency, it had no basis to believe Claimant had a developmental disability in the relevant time, before his 18th birthday. Accordingly, there was no cause under sections 4642 or 4643, nor was Service Agency otherwise required by the Lanterman Act, to complete an assessment of Claimant. (Legal Conclusions 9 & 10).

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12. Claimant failed to establish by a preponderance of the evidence he has a developmental disability as defined by the Lanterman Act. (Factual Findings 5-10; Legal Conclusions 3-5, 9-11.)

ORDER

Service Agency properly declined to complete an assessment of Claimant. Claimant is not eligible for services under the Lanterman Act. Claimant's appeal is denied.

DATE:

CHANTAL M. SAMPOGNA
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.