

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER, Service Agency.

DDS No. CS0020699

OAH No. 2024090498

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on December 18, 2024.

Sonia Tostado, Director's Designee, represented Westside Regional Center (Service Agency).

Claimant Austin Nash represented himself.

The ALJ received testimony and documentary evidence. On December 18, 2024, the ALJ continued the hearing to January 6, 2025, to allow claimant to submit additional evidence. On January 6, 2025, at claimant's request, the ALJ continued the

hearing to January 10, 2025, to allow claimant additional time to submit evidence. Service Agency did not object to either continuance.

On January 6, 2025, claimant submitted a 12-page psychological report, marked for identification as Exhibit A. Exhibit A is identical to Service Agency's Exhibit 8 and was therefore not admitted into evidence. Claimant did not submit any additional evidence. The record closed, and the matter was submitted for decision on January 10, 2025.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of autism?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 15, and the testimony of Thompson Kelly, Ph.D., Service Agency's Intake and Eligibility Services Manager; Adrian Rios, claimant's case manager with Alcott Center for Mental Health; and claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 30 years old and seeks regional center services under the category of autism.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On September 4, 2024, Service Agency sent claimant a Notice of Proposed Action indicating claimant was ineligible for regional center services because he did not meet the eligibility criteria under the Lanterman Act.

4. On September 11, 2024, claimant timely filed a Fair Hearing Request. This hearing ensued.

Claimant's Request for Services

BACKGROUND

5. Claimant grew up in Hawaii, along with a sister and half-brother, raised primarily by his mother. When claimant was 16 years old, his mother passed away after a heart attack. Claimant then moved to Los Angeles to live with his father.

6. While in elementary and high school, claimant qualified for an Individual Educational Plan (IEP) under the category of Emotional Disturbance. An IEP report dated September 7, 2010, when claimant was 16 years old, documented concerns with claimant's reading comprehension, written expression, and personal responsibility for his own learning.

7. Claimant did not complete high school and has never held a job. Claimant lives alone because his father moved in with claimant's sister after being diagnosed with cancer.

CLAIMANT'S CHILDHOOD

8. Claimant testified he struggled in childhood with communication, sensory, and hyper fixation issues. He described himself as nonverbal or very quiet as a young child, struggling to communicate with other people. When claimant did communicate, he did not understand social cues. According to claimant, he was overly blunt, spoke in a monotone, and did not make appropriate eye contact. He was excessively sensitive to noises, particularly buzzing noises and loud environments like a classroom. Claimant testified he wore headphones at school to blunt the noise. Claimant often could not sleep at night because he heard buzzing noises in his bedroom. Claimant ate only a limited number of foods because he did not like the texture of many foods. He fixated on certain games, toys, or objects.

9. Claimant described himself as constantly overwhelmed and struggling as a child. Claimant's mother did not understand him or why he could not function like other children. Claimant did not make friends because others viewed him as gullible, and he did not understand subtleties when communicating with others. Claimant was preoccupied with figuring out what was wrong with himself and considered himself a "loner."

MENTAL HEALTH CONDITIONS

10. According to claimant, he was diagnosed with attention-deficit/hyperactivity disorder (ADHD) when he was in first grade.

11. Claimant suffers from Post-Traumatic Stress Disorder (PTSD) caused by extensive physical and emotional abuse by his mother. Claimant also suffers from depression and anxiety, which claimant attributes in part to his childhood trauma. As a

child, claimant became overwhelmed and stressed by his mother's abuse, causing him to withdraw from other children.

12. Claimant testified he participated in therapy for many years for PTSD, depression, and anxiety. He does not have records from the therapy he received as a child. He explained he felt depressed because he knew something was "wrong with [him]" and he could not fix it. He believes this feeling arose from his undiagnosed autism.

CURRENT SYMPTOMS

13. Claimant testified he suffers now from the same symptoms as when he was a child: communication, sensory, and hyper fixation issues. His years of therapy for PTSD and depression have not improved his symptoms.

14. Claimant asserted his sensory issues prevent him from maintaining a job because he cannot function when he experiences certain sensations. He testified if "a sound hits [him] the wrong way," he feels like he is about to collapse.

15. Claimant has difficulty communicating, such as when he attends doctor's appointments. Claimant can communicate quite well for a limited time, such as while testifying at hearing, but he described this ability as "masking" his true condition, which leaves him exhausted. Claimant testified he is incapable of attending a doctor's appointment on his own. His inability to communicate causes him anxiety.

16. Claimant becomes fixated on certain topics or objects. He pointed to many Gundam model kits stacked in his home, which were visible during the hearing behind claimant.

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17. Claimant found relief from some of his symptoms by resting and avoiding overstimulation. This discovery contributed to his belief he suffered from autism, rather than only PTSD and/or depression.

18. Claimant denies he is currently depressive. On the contrary, despite his challenges, claimant wants to live a better life and seek help. Claimant accepts that some of his symptoms will not improve, and he wants to learn to live with them. Claimant asserted he functions better when his life is structured, but he cannot create structure without assistance. He wants to obtain a certificate of high school equivalency and start a non-profit organization to help other people.

19. Claimant seeks regional center services because he wants an autism specialist to help him manage his symptoms and improve his life. He wants the opportunity to succeed with the right assistance, especially because several of his relatives, including his sister's children, were diagnosed with autism and he believes the condition runs in his family.

CASE MANAGER ASSISTANCE

20. Since February 2024, Adrian Rios has been assigned as claimant's case manager with the Alcott Mental Health Center (Alcott Center). He meets with claimant two or three times per month to assist him with making phone calls, scheduling and attending medical appointments, and applying for government benefits. Claimant has been an Alcott Center client for almost two years and qualifies for services based on his mental health conditions.

21. Mr. Rios corroborated claimant's testimony regarding his difficulty communicating with others, particularly in medical or other complex situations. Mr. Rios explained claimant is often unable to answer questions other than basic ones,

relying instead on Mr. Rios to communicate on his behalf with doctors and other professionals.

22. Mr. Rios described claimant's adherence to unusual routines, such as refusing to leave his room unless he sets up a camera to monitor the room while he is not there. Claimant will lock the door five or six times and sometimes still return to check whether the door is locked.

SEPTEMBER 2023 EVALUATION

23. On September 29, 2023, Mark Borkheim, Ph.D., evaluated claimant in response to a referral from Alcott Center. Dr. Borkheim administered various tests, including the Gilliam Autism Rating Scale, Third Edition (GARS-3), to assess claimant. Claimant's statements to Dr. Borkheim during his September 2023 evaluation were consistent with his testimony at hearing.

24. Dr. Borkheim concluded claimant had a wide range of symptoms meeting the criteria for a diagnosis of autism, including sensitivity to sounds and light, inappropriate interactions with strangers, ritualized behaviors around cleaning, stereotyped interests, high emotional lability, and poor response to social cues.

25. Claimant scored an overall "very likely probability of autism" on the GARS-3, with a moderate level of severity requiring substantial support. The autism index was 81. (Ex. 8, p. A38.) Dr. Borkheim acknowledged claimant's autism symptoms create a complicated interplay and interaction with his other psychiatric symptoms, notably his PTSD.

26. Dr. Borkheim added claimant will have difficulty performing and adapting to everyday functional activities, such as shopping or being in public spaces generally,

due to his combined PTSD and autism symptoms. Claimant's anxiety and depression, according to Dr. Borkheim, likely stem from his ongoing inability to adapt to and perform everyday behaviors. Claimant's PTSD stems from childhood abuse related to claimant's mother punishing and chastising claimant for deficits associated with autism.

27. Dr. Borkheim recommended claimant seek regional center services. He noted claimant is not expected to be able to adapt to a normal work environment and will require specialized structure and routines. Claimant may present as higher functioning than he actually is due to his verbal fluency.

Service Agency's Denial of Eligibility

28. On December 11, 2023, Viviana Sosa, Service Agency's Intake Coordinator, conducted a psychosocial assessment of claimant. During the assessment, claimant expressed similar concerns to those he reported to Dr. Borkheim and consistent with his testimony at hearing.

29. On March 5, 2024, Bernice Joo, Ph.D., conducted a telehealth psychological assessment of claimant. Dr. Joo concluded claimant demonstrated many symptoms of autism as a child and continued to demonstrate some symptoms during her assessment. She recommended claimant be evaluated in person to determine if he was eligible for regional center services.

30. On June 28, July 10, and July 25, 2024, Melissa Bailey, Psy.D., conducted a psychological evaluation of claimant. Dr. Bailey administered several tests, including the Autism Diagnostic Observation Schedule, Second Edition (ADOS). Dr. Bailey concluded claimant did not present with autism based on his ADOS results. She noted claimant showed a wide range of affect, and she did not observe any stereotypical or

repetitive behavior. Dr. Bailey found claimant met the criteria for mental health issues rather than a developmental disability.

31. In his testimony at hearing, Thompson Kelly, Ph.D., Service Agency's Intake and Eligibility Services Manager, explained Service Agency's rationale for its denial of eligibility for claimant. Dr. Kelly is a licensed clinical psychologist and has been performing psychological evaluations for 35 years, including 17 years as part of Service Agency's eligibility team. In addition to Dr. Kelly, the eligibility team consists of a physician, a behavioral analyst, a psychologist, and an assistant intake manager. After reviewing Dr. Borkheim's evaluation, the psychosocial assessment, Dr. Joo's telehealth assessment, Dr. Bailey's evaluation, and claimant's IEP records, the eligibility team concluded claimant did not have a developmental disability qualifying him for regional center services. Dr. Kelly testified the eligibility team found claimant's disabilities are "more informed by" his mental health conditions such as depression and anxiety.

32. In support of Service Agency's denial of eligibility, Dr. Kelly also cited a lack of records proving claimant was substantially impaired during his childhood, such as educational records. Dr. Kelly explained people with autism require lifetime support and have consistent symptoms, beginning in childhood, which are usually reflected in an individual's school records. However, claimant's IEP records did not demonstrate the level of impairment or support Dr. Kelly would expect for a person with autism.

33. On cross-examination, Dr. Kelly acknowledged claimant's symptoms could be caused by autism but asserted they were also consistent with chronic and persistent mental health issues, such as those suffered by claimant. Dr. Kelly testified, "nobody is disputing [claimant has] a disabling condition" and a significant history of social and emotional issues. The issue is "to what we attribute that."

34. Dr. Kelly discounted Dr. Borkheim's autism diagnosis because Dr. Borkheim failed to include details in the narrative of his report to support his diagnostic conclusion. Dr. Borkheim did not explain why autism rather than PTSD, depression, or anxiety caused claimant's symptoms.

35. Dr. Kelly acknowledged, however, that Dr. Bailey also did not "do a great job" justifying her diagnostic conclusion. Dr. Kelly found both Dr. Borkheim's and Dr. Bailey's reports "could be better" and categorized both as "inconclusive." Neither examiner discussed in detail the autism diagnostic criteria. Each examiner instead only summarized their findings. Dr. Bailey also did not include claimant's ADOS score in her report.

Claimant's Eligibility for Services

QUALIFYING CONDITION

36. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), diagnostic criteria for autism spectrum disorder consist of two parts. The first set of criteria, Part A, requires persistent deficits in social communication and social interaction across multiple contexts, as manifested by all the following: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining and understanding relationships. The second set of criteria, Part B, requires restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence of sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behaviors; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper- or

hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment.

37. Dr. Borkheim's conclusion claimant appears to meet the criteria for a diagnosis of autism, coupled with testimony by claimant and Mr. Rios, was more persuasive than Service Agency's evidence to the contrary. Dr. Borkheim's findings were consistent with the eligibility criteria set forth in the DSM-5. In her telehealth assessment, Dr. Joo also noted claimant demonstrated symptoms of autism. In his testimony at hearing, Dr. Kelly acknowledged claimant's symptoms could be caused by autism. Mr. Rios corroborated claimant's testimony about his current symptoms.

38. Dr. Bailey's opinion was not sufficiently well-supported to outweigh claimant's evidence. She provided limited detail about her assessments and did not thoroughly discuss the DSM-5 autism diagnostic criteria and why she believed claimant did not meet the criteria. Some of her conclusions, such as that claimant can attend medical appointments or that there was no evidence of stereotypical or repetitive behaviors, were not supported by the evidence. While claimant may be able to go to a medical appointment, the evidence was clear that he needs significant assistance in doing so. Likewise, there was ample evidence claimant engaged in repetitive behavior.

39. Claimant credibly testified his symptoms began in childhood and remained consistent throughout his life. He explained his inability to function normally caused him depression and anxiety, and his mother's reaction to his deficits led to abuse and caused claimant PTSD. Dr. Borkheim found this explanation credible.

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SUBSTANTIAL DISABILITY

40. Dr. Kelly acknowledged claimant is substantially disabled in at least three areas of major life activities: (1) economic self-sufficiency, meaning claimant lacks the capacity to participate in vocational training or to obtain and maintain employment without significant support; (2) capacity for independent living, meaning claimant is unable to perform age-appropriate independent living skills without the assistance of another person; and (3) self-direction, meaning claimant has significant impairment in the ability to make and apply personal and social judgments and decisions.

41. The evidence established claimant's impairments are caused by autism. As cited by Dr. Borkheim, claimant is sensitive to sounds and light, is unable to appropriately interact with strangers, engages in ritualized behaviors around cleaning, has stereotyped interests and high emotional lability, and responds poorly to social cues. All these symptoms cause impairment in the three areas described above. Claimant explained his sensory issues prevent him from maintaining a job without assistance. According to Dr. Borkheim, claimant will have difficulty performing and adapting to everyday functional activities, such as shopping or being in public spaces generally, which significantly impacts his capacity for independent living. His communication limitations contribute to his impairment in self-direction.

42. The evidence does not support a conclusion that claimant's symptoms and impairments are caused solely by mental health conditions or even that they are "more informed by" mental health conditions, as opined by Dr. Kelly and the eligibility team. Claimant's mental health conditions certainly contribute to his impairment, but it is impossible to ignore the impact of autism, particularly because claimant experiences anxiety and depression in response to his autism symptoms.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant bears the burden to prove by a preponderance of the evidence he is eligible for regional center services. (Evid. Code, §§ 115; 500.) “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.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Department of Developmental Services is the public agency responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Under the Lanterman Act, a developmental disability is 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. A developmental disability includes intellectual disability, cerebral palsy, epilepsy, autism, and other conditions similar to intellectual disability or requiring treatment similar to that required by individuals with intellectual disability, i.e., the fifth category. (Welf. & Inst. Code, § 4512, subd. (a).)

5. "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (1)(1).)

Claimant's Eligibility for Services

6. Claimant proved by a preponderance of evidence he is eligible for regional center services because he is substantially disabled by autism, as described in Factual Findings 36 through 42.

ORDER

Claimant's appeal is granted. He is eligible for regional center services under the category of autism.

DATE:

HARDEN SOOPER

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 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.