

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

B.B.,

Claimant,

and

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 201308228

DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Bakersfield, California, on October 11, 2013.

Susan Hernandez, Interim Director of Client Services, represented Kern Regional Center (Regional Center or Service Agency).

Claimant's mother, M.C.¹, represented Claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act,

¹ Initials have been used to protect the privacy of Claimant and his family.

Welfare and Institutions Code² section 4500 et seq. (Lanterman Act)?

FINDINGS OF FACT

1. Claimant is ten years old, and resides with his mother, his two siblings, and his maternal grandfather.

2.a. In November 2011, while Claimant was in the third grade, his mother asked the Panama-Buena Vista Union School District (District) to evaluate Claimant for eligibility for special education services due to concerns with his academic performance. The assessment was conducted by a multidisciplinary team that included a school psychologist, a nurse, two teachers, and a school principal.

b. His cognitive ability was measured in the average range through the Wechsler Intelligence Scale for Children, Fourth Edition. Results from the Woodcock-Johnson Tests of Achievement, Third Edition, Normative Updated were in the average range (brief reading, basic reading skills, math reasoning, written expression, and reading comprehension), and in the superior range (broad reading, math calculation skills, and brief math).

c. In order to assess social, emotional and behavioral issues, evaluators administered the Behavior Assessment System for Children, Second Edition and the Conners Rating Scales, Third Edition, each based on parental and teacher reports. Differences existed in the results, depending on the reporter, with his mother reporting significant maladaptive behaviors. As noted in the report, "According to the teacher's ratings, [Claimant] does not exhibit significant level of maladaptive behaviors in the school setting. Though there is concern regarding [Claimant's] behavior in social settings, especially peer relationships. [Claimant] is generally alone, has difficulty making friends, and/or is unwilling to join group activities. However, [Claimant's] mother indicated that he

² All further statutory references are to the Welfare and Institutions Code.

exhibits a significant level of maladaptive behaviors in the home environment.” (Exh. 10, at p. 11.)

d. Evaluators concluded that Claimant was not eligible for special education services due to a specific learning disability or other health impairment. It was noted that he had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and that his mother reported emotional and behavioral issues at home, but since these problems did not manifest themselves in the school setting special services were not required.

3. On July 18, 2012, Jagdeep Garewal, M.D. (Garewal), a psychiatrist, diagnosed Claimant with ADHD, Bipolar Disorder, and Asperger’s Disorder. Dr. Garewal described behaviors associated with ADHD in his note, but did not document any behaviors or diagnostic testing undertaken to diagnose Asperger’s Syndrome. Dr. Garewal is prescribing medications, Risperdal and Concerta, to treat the ADHD and the Bipolar Disorder. Claimant receives counseling for 15 minutes once or twice per month.

4. Following Dr. Garewal’s diagnoses, Claimant was made eligible for special education services on the basis of speech and language impairment. He attends a regular fourth grade classroom and receives speech services, social skills training, and special accommodations, such as additional time for assignments and sitting in the front of the class.

5.a. On January 28 and February 18, 2013, Allison Little, Ph.D. (Little), performed an evaluation for Service Agency to assist in the determination of eligibility. In addition to her clinical observations and mental status examination of Claimant, Dr. Little administered the Wechsler Abbreviated Scale of Intelligence (WASI), the Autism Diagnostic Observation Schedule 2, Module 3 (ADOS), the Gilliam Asperger’s Disorder Scale (GADS), the Gilliam Autism Rating Scale (GARS), and the Vineland Adaptive Behavior Scales, Second Edition (Vineland).

b. Claimant obtained a full scale score of 116 in the WASI, which placed him in

the 86th percentile, in the above average range.

c. Dr. Little administered three tests diagnostic of autism spectrum disorders, two, the GADS and the GARS, based on parental report. Claimant's scores in the ADOS, a semi-structured observation instrument used to assess social and communicative behaviors, fell below the threshold to diagnose an Autistic Spectrum Disorder. According to reports in the GADS and GARS, Claimant demonstrated several signs or symptoms of Autism and Asperger's. However, in Dr. Little's opinion, these signs were insufficient, given her overall evaluation, to lead to an Autism Spectrum diagnosis.

d. Adaptive skills were scored in the moderately low range in the daily living skills and socialization domains of the Vineland, based on parental report.

e. Dr. Little diagnosed Claimant with ADHD, Combined Type (By History), and Mood Disorder, Not Otherwise Specified (Provisional).

6. Claimant's mother testified that he has deficits in social interaction, self-care, and learning. Claimant still has tantrums, as a four-year-old does. He forgets to clean himself when he uses the toilet. He needs direction to perform basic tasks. He is receiving Ds and Fs in school.

7. Claimant's mother is concerned that the medications he takes mask his autistic behaviors, such as hyperactivity, quirky and repetitive movements, and self-injurious actions like banging his head. Dr. Little noted that Claimant was on medications for ADHD and that he did not display obvious signs or symptoms characteristic of ADHD. Dr. Little did not opine on whether she thought the medications were also masking symptoms of autism. However, because Dr. Little was aware of the medications, because she observed Claimant, and because she still rendered an opinion about the presence of autism, it is concluded that Dr. Little did not believe the medications precluded her from rendering valid diagnoses. In light of Dr. Little's considered opinion, and the absence of any scientific evidence to the contrary, Claimant's concerns are insufficient to call into

question the validity of Dr. Little's evaluation. In any event, even if the medication masked some behaviors, a diagnosis of autism still requires communication and social deficits, which Dr. Little did not find.

8. On July 18, 2013, Service Agency issued a Notice of Proposed Action, informing Claimant that he was not eligible for services under the Lanterman Act. Claimant's mother filed a Fair Hearing Request on July 30, 2013.

LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as "a disability that originates before an individual attains age 18 years, 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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a).)

2. In this case, no evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that he has either condition. The evidence of cognitive functioning indicates that Claimant does not have mental retardation, or a condition closely related to mental retardation or requiring treatment similar to that required by individuals with mental retardation. While Claimant has some adaptive skills deficits in daily living skills and in socialization, these are insufficient to establish the presence of a developmental disability.

3. Claimant's mother reported some behaviors consistent with Autism Disorder, but these were not deemed sufficient by Dr. Little to lead to a diagnosis of Autism. Dr.

Garewal provided a diagnosis of Asperger's, but did not present the basis of his opinion or opine regarding whether the conditions presents a substantial disability for Claimant. His diagnosis is insufficient to establish that Claimant has Autism or to warrant rejection of Dr. Little's contrary opinion.

4. By reason of the foregoing factual findings and legal conclusions, Claimant did not establish that he has a developmental disability that makes him eligible for services under the Lanterman Act.

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ORDER

Claimant's appeal is denied.

DATED: October 23, 2013

_____/s/_____

SAMUEL D. REYES

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.