

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Service Agency.

OAH No. 2015020764

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on September 10, 2015, in Van Nuys, California.

Rhonda Campbell, Fair Hearing Representative, appeared and represented the North Los Angeles County Regional Center (the Service Agency).

Claimant's mother<sup>1</sup> appeared and represented claimant as his authorized representative. Claimant was not present at the hearing.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

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<sup>1</sup> Claimant and his mother are identified by title, not by name, in order to protect their privacy.

## STATEMENT OF ISSUES

The issue in this case is whether claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

## EVIDENCE CONSIDERED

1. Service Agency's Exhibits 1-23.
2. Testimony of Sandi J. Fischer, Ph.D.; claimant's mother.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is an 8-year-old boy who lives at home with both parents. Spanish is the primary language at home. He was referred to the Service Agency due to academic delay and poor expressive skills.

2. On June 11, 2014, the Service Agency determined that claimant had no developmental disability as defined in the Lanterman Act at Welfare and Institutions Code section 4512 and at California Code of Regulations, title 17, section 54000, rendering him ineligible for regional center services. The Service Agency stated the same in a Notice of Proposed Action issued on June 10, 2014.

3. Claimant filed a request for fair hearing on January 28, 2015.

### CLAIMANT'S BACKGROUND

4. On September 12, 2011, claimant enrolled in a Head Start program at his school. Claimant's speech was difficult to understand in the classroom. At the time, claimant was four years old and his parents were growing concerned about his language skills. Claimant's teacher referred him to the Speech, Language and Educational Associates (SLEA) for an assessment.

5. On December 13, 2011, Judi Niver, M.A. CCP-SLP, of SLEA, evaluated

claimant and wrote a report. Dr. Niver administered the Preschool Language Scale-4, a standardized test to measure language development of children up to six years of age. Claimant's scores measured his receptive language skills at the age equivalent of two years four months, although claimant was four years old at the time. His scores were in the first percentile, which indicated to Dr. Niver that claimant was suffering significant delays in comprehending vocabulary that was appropriate for his age and that these delays were impacting his ability to understand classroom directions.

6. Claimant applied for special education services from Los Angeles Unified School District (LAUSD). On January 17, 2012, Susan Mael, M.A., a psychologist with LAUSD, conducted an assessment of claimant to determine his eligibility for special education services. Dr. Mael observed claimant in a classroom setting and reported that claimant looked comfortable, he recognized his name on a board, he followed directions, he sat appropriately, and he was proud when he completed tasks. However, he had difficulty with verbal tasks. When asked a question, he would often repeat the question rather than answer the question. When he attempted to answer a question, claimant's response was off topic. The psychologist observed "a significant discrepancy between [claimant's] non-verbal cognitive abilities and his academic achievement due to an auditory processing problem which affects his listening skills." (Ex. 4.) Dr. Mael concluded that claimant met the eligibility criteria for special education services due to a specific learning disability. Thereafter, claimant began receiving special education services on that basis.

7. Two years later, in 2014, the school referred claimant to the Service Agency to determine if claimant was eligible for regional center services. On April 8, 2014, the Service Agency performed a Social Assessment. The Social Assessment report noted, among other things, that claimant was eligible for special education services as a student with a specific learning disability. The Social Assessment recommended securing

medical and school records and scheduling a medical and psychological evaluation as needed. Upon receipt of the reports and evaluation, the Service Agency would determine claimant's eligibility.

8. On April 29, 2014, Efrain A. Beliz Jr., Ph.D., performed a psychological evaluation to assess claimant's cognitive and adaptive functioning. Based on the results of the Wechsler Intelligence Scale, claimant's abstract reasoning abilities, vocabulary, and practical problem-solving abilities were below normal. However, his nonverbal concept formation and processing speed fell within the normal range. Claimant's scores on the Vineland – II suggested "mildly impaired adaptive skills." (Ex. 8, p. 3.) Dr. Belize found that claimant had "normal intelligence" and that there was "no evidence of cognitive delay." (Ex. 8, p. 4.) Claimant's visual and mathematical skills were average. Dr. Belize observed no evidence of autism spectrum disorder.

9. On June 5, 2014, after reviewing claimant's medical and school records and Dr. Belize's psychological evaluation, the Service Agency's Interdisciplinary Eligibility Committee determined that claimant was ineligible for regional center services and benefits.

10. Claimant's Individualized Education Program Report (IEP) dated January 14, 2015, indicates that his eligibility for special education services was now based on "autism." (Ex. 12.) The IEP contained no explanation for the change in eligibility from specific learning disability to autism.

11. On April 1, 2015, claimant's mother met with the Service Agency to informally discuss claimant's eligibility for regional center services in light of the change made in his special education eligibility. The Service Agency furnished claimant's mother with information and reports that were relied upon to make the June 5, 2014 determination that claimant was ineligible for regional center services. The Service Agency agreed to defer any decision about claimant's eligibility for regional center

services until the Service Agency performed its own evaluation.

12. Dr. Sandi J. Fischer, Ph.D., a Service Agency psychologist, testified at the hearing. On April 23, 2015, Dr. Fischer observed claimant in a classroom setting at the New Academy, claimant's general education school at the time. Claimant sat with other students, and attempted to participate in classroom activities. However, he had difficulty with word recognition exercises and, when asked a question, claimant responded off topic. The teacher paid more attention to claimant than to other students. At recess, claimant stopped what he was doing, put things away, and joined the other students in line. In the school yard, claimant played tag with other students. When recess ended, claimant ran and joined his class.

#### OTHER MEDICAL AND SCHOOL RECORDS

13. Dr. Fischer testified about her review of the medical and school records relied upon by the Service Agency. Dr. Fischer reviewed claimant's IEP dated January 27, 2014. The IEP stated that claimant's eligibility for special education services was in the category of specific learning disability. This IEP reflected that claimant exhibited difficulty understanding questions. He continued to respond off topic or to respond with jargon words, an indicator that he was confused or did not know what to say. Dr. Fischer explained that routines were becoming important to claimant because they enabled him to anticipate what he was expected to do.

14. Dr. Fischer testified about her review of the report dated March 23, 2015, by Dr. Aileen Arratoonian, Ph.D., a psychologist with Gunn Psychological Services, Inc. Dr. Arratoonian evaluated claimant as part of the three-year review of his IEP. Dr. Arratoonian administered standardized testing instruments and procedures, including the Woodcock-Johnson III, Autism Diagnostic Observation Scale, 2nd edition (ADOS-2), NEPSY – II, and the Wechsler Intelligence Scale of Children, 5th edition (WISC-V).

15. According to Dr. Arratoonian's report, claimant exhibited polite behavior,

used eye contact, and transitioned well between tasks. On the other hand, he bit his nails and rocked in his chair, and he continued to perform poorly in speech and language skills. With respect to his general ability and cognitive functioning, claimant obtained composite scores with mixed results. He scored in the “very low range” on the Verbal Comprehension Index (VCI), Working Memory Index (WMI), and Processing Speed Index (PSI). However, he scored in the average range on Visual Spatial Index (VSI) and Fluid Reasoning Index (FRI). (Ex. 13.) On measures of various facets of attention and visual processing speed, claimant performed in a range from severely impaired to average. Claimant’s overall auditory memory skills, including auditory working memory, auditory comprehension, and auditory reasoning, were in the severely impaired range. Dr. Arratoonian determined that the following autistic-like behaviors were revealed by the test results: (a) an inability to use verbal and nonverbal language for appropriate communication and social interactions; (b) an obsession to maintain sameness such as resistance to environmental changes or change in daily routines; and (c) the display of peculiar mannerisms and motility patterns such as repetitive activities and stereotyped movements. Dr. Arratoonian concluded that claimant met the special education eligibility criteria for autism, as a student with both autistic-like behaviors and a specific learning disability.

16. On May 12, 2015, Dr. Amalia Sirolli, Ph.D., another Service Agency psychologist, administered the Autism Diagnostic Observation Schedule (ADOS-2) to assess possible characteristics of autism spectrum disorder. The results were not in the autism range. The psychometric data revealed scores below the established autism cutoff levels for reciprocal social interaction, communication, non-verbal communication, repetitive patterns of behavior, and abnormal development.

#### REGIONAL CENTER’S DETERMINATION

17. After completing the observation, record review, and testing described in

Factual Findings 12 through 16, Dr. Fischer authored a Testing and School Observation Report. Dr. Fischer concluded that claimant did not meet the regional center eligibility criteria for a diagnosis of Intellectual Disability or Autism Spectrum Disorder. Her conclusions were based on the following diagnostic impressions:

- (A) Claimant was observed interacting with a number of different students in the classroom and on the school yard, behavior which does not indicate a deficit in social-emotional reciprocity.
- (B) Claimant's use of eye contact during his interactions with his peers and teachers was age appropriate.
- (C) According to his teachers, claimant had developed age appropriate friendships.
- (D) Claimant did not engage in any stereotypic or repetitive motor movements or speech during the observation.
- (E) Claimant did not insist on sameness and he did not exhibit an inflexible adherence to routines or ritualized patterns. In her testimony, Dr. Fischer explained that the importance to claimant of routines was to enable him to anticipate how to conduct himself, but was not attributed to autism.
- (F) Claimant exhibited no highly restricted, fixated interests that were abnormal in intensity or focus.
- (G) Claimant exhibited no sensory sensitivities.
- (H) Claimant's problems with attention, distractibility, and impulsivity were more likely associated with a diagnosis of Attention Deficit Disorder or Language Disorder.

18. Dr. Fischer also testified that the goals stated in claimant's January 14, 2015 IEP are inconsistent with the definition of autism in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-5). None of the goals stated in the IEP

relate to initiating and responding to other children, interaction, or other behaviors associated with autism. Dr. Fischer noted that the IEP contained no explanation for the change in eligibility from specific learning disability to autism.

19. On June 15, 2015, after considering Dr. Fischer's report, the Service Agency issued its re-determination affirming the prior denial of services for claimant. The Service Agency notified claimant's mother of this determination by letter dated June 17, 2015.

20. Claimant's mother testified that no medical doctor has diagnosed claimant with intellectual disability, cerebral palsy, epilepsy, or autism. No evidence was presented that claimant has a condition closely related to intellectual disability or requires treatment similar to that required for persons with intellectual disability.

## LEGAL CONCLUSIONS

1. For the reasons discussed below, claimant's appeal shall be denied. He does not have a qualifying developmental disability. Thus, claimant is not eligible for regional center services.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

3. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the regional center's decision. Where a claimant seeks to establish eligibility for services, the burden is on the appealing claimant to demonstrate that the regional center's decision is incorrect. Claimant has not met his burden of proof in this case.

4. In order to be eligible for regional center services, a claimant must have a



qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "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, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.

5. A developmental disability does not include handicapping conditions that are solely learning disabilities, which manifest "as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).)

6. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." A "substantial disability" is a condition which results in major impairment of cognitive or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential. (Cal. Code Regs., tit. 17, § 54001, subd. (a).)

7. In addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth category of eligibility is described as "Disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation." (Welf. & Inst. Code, § 4512.)

## DISCUSSION

8. In this case, claimant has failed to establish that his handicapping condition constitutes a substantial disability under California Code of Regulations, title 17, section 54001. Claimant has a speech and language disorder that originated before the age of 18 years. However, his handicapping condition does not result in major impairment of his cognitive functioning. Compelling medical evidence shows that claimant has average intelligence and mildly impaired adaptive functioning. Claimant's condition does not result in major impairment of his social functioning based on his observed conduct in classroom settings and the school yard. Because claimant's speech and language disorder is not a substantial disability, his condition does not constitute a developmental disability under the Lanterman Act.

9. The evidence establishes that claimant suffers from a learning disorder, a condition that is expressly excluded from the definition of a developmental disability. The initial assessment for special education eligibility was based on a specific learning disability. The discrepancy observed by school psychologists between claimant's non-verbal cognitive abilities and his academic achievement support the finding of a specific learning disability.

10. Moreover, claimant has not shown that his disability is caused by one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. There is no evidence that claimant has a diagnosis of intellectual disability, cerebral palsy, or epilepsy. The autism diagnosis by LAUSD is not sufficient to establish eligibility for regional services based on autism. Although the 2015 IEP contradicts the Service Agency's determination, the report does not include any explanation for the change in eligibility from specific learning disability to autism, and the goals set forth in the IEP are inconsistent with the definition of autism in the DSM-V. Dr. Arratoonian's opinion that claimant revealed autistic-like behaviors is outweighed by the opinions of five other

psychologists who evaluated claimant without diagnosing autism. A regional center has the exclusive authority to determine eligibility for services under the Lanterman Act. (Welf. & Inst. Code, § 4643, subd. (b).) Here, the Service Agency's determination is based on substantial and compelling medical and school records in which autism and autism spectrum disorders were considered, and yet rejected as a basis of eligibility. Accordingly, despite the evidence that LAUSD provided special education services based on autism, the totality of the circumstances leads to the legal conclusion that claimant does not have autism for purposes of regional center eligibility.

11. A disabling condition may nonetheless qualify as a developmental disability if "found to be closely related to mental retardation<sup>2</sup> or to require treatment similar to that required for mentally retarded individuals." (Welf. & Inst. Code, § 4512, subd. (a).) This alternate category of eligibility is commonly referred to as the "fifth category." Fifth category eligibility is broad, so as to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior. Under the Lanterman Act, a regional center does not have a duty to serve all of them.

12. While the Legislature has not defined the fifth category, the code and regulations require that the qualifying condition be "closely related" (Welf. & Inst. Code, § 4512, subd. (a)) or "similar" (Cal. Code. Regs., tit. 17, § 54000) to intellectual disability or "require treatment similar to that required for mentally retarded individuals." (Welf. & Inst. Code, § 4512, subd. (a).) The definitive characteristics of intellectual disability

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<sup>2</sup> Mental retardation is now referred to as intellectual disability under DSM-5. All references to intellectual disability include mental retardation within the meaning of the code and regulations.

include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to intellectual disability, there must be a manifestation of cognitive or adaptive deficits, or both, which render that individual’s disability like that of a person with intellectual disability.

13. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability (e.g., reliance on IQ scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant’s cognitive and adaptive functioning and a determination of whether the effect on his performance renders him like a person with intellectual disability. Furthermore, determining whether a claimant’s condition requires treatment similar to that required for individuals with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, or living skills training). The criterion is not whether claimant would benefit. Rather, it is whether claimant’s condition requires such treatment.

14. In this case, claimant suffers from a speech and language disorder that has impaired his ability to follow instructions at school. However, claimant’s condition is not closely related to intellectual disability because he has normal intelligence but suffers from a learning disability. Claimant has failed to establish that he requires treatment similar to one who suffers from an intellectual disability. No expert evidence was submitted about claimant’s treatment needs and the services that would address those needs.

15. Claimant has failed to establish by a preponderance of the evidence that he has a developmental disability as that term is defined in the Lanterman Act that would establish eligibility for regional center services. His appeal shall be denied.

(Factual Findings 1-20.)

## ORDER

Claimant's appeal is denied. Claimant is ineligible for regional center services under the Lanterman Act.

DATED: September 24, 2015

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MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.