

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2019090093

DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 15, 2019, in Culver City, California.

Claimant¹ represented herself. Candace Hine, Fair Hearing Specialist, represented the Westside Regional Center (Service Agency or WRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 15, 2019.

¹ Claimant is identified by title to protect her privacy.

ISSUE

Is Claimant eligible to receive services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documents: Service Agency's exhibits 1-7.

Testimony: Dr. Kaely Shilakes and Claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 26-year-old woman who referred herself to the Service Agency at the suggestion of a therapist who suspected that Claimant had Asperger's Disorder. As such, in January 2019, Claimant applied for regional center services on the basis of autism.

2. On June 3, 2019, the Service Agency sent a letter and a Notice of Proposed Action to Claimant informing her that she was not eligible to receive regional center services, because she was not substantially impacted by an intellectual disability, autism spectrum disorder, cerebral palsy, epilepsy, or other condition similar to intellectual disability.

3. On June 24, 2019, Claimant filed a Fair Hearing Request to appeal the Service Agency's decision and to request a hearing. This hearing ensued.

Claimant's Background

4. Claimant currently works part-time as a case aide at Gateways Hospital, a mental health facility, where she takes clients to appointments and helps them transition into the community. She lives in her own apartment in Hawthorne with her dog. She has been diagnosed with social anxiety disorder and atypical depression, and has received psychotherapy since 2014.

5. Claimant is academically gifted. She graduated high school early, attended college, and received her bachelor's degree in psychology from Arizona State University in 2015. She then earned her master's degree in psychology from Pepperdine University in 2017. Claimant enrolled in a doctorate program at Alliant International University to study clinical psychology, but experienced academic difficulty, which resulted in Claimant withdrawing from school.

6. At hearing, Claimant explained that her "autistic-like" symptoms interfered with her ability to meet the demands of her doctorate program. Specifically, Claimant testified that she interprets the world differently in that she "is very internal and lives life in [her] head and does not include others in [her] form of thought, which manifests a little bit narcissistic." In normal social settings, she cannot read all of the subtle non-verbal cues, "but has learned to navigate and look normal and fit in." She gets overwhelmed very quickly and deals with a lot of anxiety, which fuels her depression. She is very comfortable all by herself, and requires a lot of "down time" after being with people socially, as it drains her. In addition to interpersonal relationships, Claimant struggles with adhering to a budget and paying her bills in a timely fashion.

Kaiser Evaluation

7. Claimant underwent a psychological evaluation at Kaiser Permanente (Kaiser) on August 20, 2018 to determine whether her symptoms meet the criteria for autism spectrum disorder (ASD). The examiner determined that Claimant did not meet the criteria for a diagnosis of ASD; however, Claimant later contended that the examiner used protocol designed for examining children instead of adults, and requested a new evaluation. Consequently, Claimant underwent an additional Kaiser examination in January 2019.

8. Claimant underwent a new Kaiser evaluation administered by David Sylva, Ph.D., clinical psychologist, in January 2019. Claimant reported social communication and interaction deficits. Specifically, in the area of social-emotional reciprocity, Claimant reported that she hates "small talk" and is averse to physical touch. In the area of communicative deficits, Claimant reported she does not like people looking into her eyes. (Ex. 7, p. 3.) In the area of relational deficits, Claimant reported that she thought she was good at understanding people's "vibes and auras," but does not try to make in-person friends.

9. In the area of restricted and repetitive behavior, Claimant denied having any stereotyped movements other than some lip curling. In the area of excessive routine adherence, Claimant reported that she hates changes in her routine, and experienced difficulty when "life doesn't happen like it does in [her] head." (*Ibid.*) Claimant denied having any unusual or restricted interests. In regard to sensory reactivity, Claimant reported having a blood/injury/injection phobia, despite having tattoos. She also hates wearing anything scratchy or anything around her neck.

10. Claimant's score on the Beck Anxiety Inventory (BAI), 23/63, was consistent with moderate anxiety symptoms. Claimant's score on the Beck Depression Inventory-2 (BDI-2), 19/63, was consistent with mild depressive symptoms. On the Autism-Spectrum Quotient (AQ), Claimant's score of 44/50 was consistent with a strong likelihood of Asperger's Syndrome or ASD. Claimant's score on the Empathy Quotient (EQ), 14/80, was consistent with lower-than-typical empathy levels, consistent with the possibility of an ASD.

11. Dr. Sylva concluded the following:

Overall, available evidence would be most consistent with either no developmental disorder (assuming few if any childhood symptoms were present) or an otherwise-specified developmental disorder: subthreshold ASD (assuming some childhood ASD traits were present though not recalled by available collateral).

(Ex. 7, p. 7.)

12. Claimant provided Dr. Sylva's conclusions and the previous Kaiser evaluations to the Service Agency. The Service Agency arranged for Claimant to undergo additional evaluations.

Psychosocial Assessment

13. On January 16, 2019, the Intake Counselor at the WRC conducted a psychosocial assessment, and evaluated her current functioning, including her motor development, social/emotional development, communication development, cognitive

development, adaptive development, family history, and health and medical status. The Intake Counselor noted that Claimant presented with social and behavioral challenges, based on Claimant's report of being overwhelmed by typical, daily experiences, which results in crying, panicking, or shutting down when things are out of Claimant's control. Additionally, Claimant described herself as obsessive-compulsive, and likes things to be in a particular order. The Intake Counselor recommended a psychological assessment to rule out ASD.

Psychological Assessments

14. On February 21, 2019, Melissa Bailey, Psy.D., conducted a psychological evaluation to determine diagnostic eligibility and treatment planning, and prepared a written report. Because Claimant indicated that she was gifted and attending graduate school, Dr. Bailey administered the Wechsler Abbreviated Scale of Intelligence, Second Edition, (WASI-II), and found Claimant functioning solidly in the average range. Dr. Bailey also administered the Vineland Adaptive Behavior Scales, Third Edition, (VABS-3), in an interview format to assess Claimant's adaptive functioning, and found Claimant functioning solidly in the high average range on all domains. Dr. Bailey also reviewed Claimant's records and observed Claimant behaviorally during the session.

15. Dr. Bailey concluded that Claimant did not meet the criteria of ASD. Dr. Bailey stated the following regarding Claimant:

[A]t no time did she engage in any stereotypical or repetitive behaviors, which is a cardinal sign of ASD.

[Claimant] also did not have any issues developmentally.

ASD is a developmental disorder. Instead, her presentation

appeared to be related to having experienced extensive trauma and abuse. [Claimant] may also meet the criteria for Social Anxiety but that is beyond the scope of this evaluation.

(Ex. 5, p. 2.)

16. As a diagnostic consideration, Dr. Bailey proffered, "Rule out: Posttraumatic Stress Disorder." (*Ibid.*)

17. On May 22, 2019, Rebecca R. Dubner, Psy.D., conducted a psychological evaluation and prepared a written report. Dr. Dubner administered the Autism Diagnostic Observation Schedule, Second Edition, (ADOS-II), Module 4. Dr. Dubner noted that Claimant exhibited intact ability to use sentences in a largely correct fashion and exhibited somewhat restricted ability in modulating her eye contact to initiate, terminate, or regulate social interaction, but was able to recognize her all of her emotions. She also noted that Claimant lived alone in an apartment, managed her own money, and made her own appointments. The results of Claimant's ADOS-II showed that in the areas of communication, reciprocal social interaction, and stereotyped behaviors, Claimant scored 1, 3, and 0, respectively, for a total of 4, which was below the cut off score of 8. A score of 8 or greater would have supported the possibility of ASD.

Service Agency Determination

18. The Service Agency's multi-disciplinary team, comprised of a physician, psychologists, and an intake manager, reviewed the psychological evaluations from Kaiser, Dr. Bailey, and Dr. Dubner, and determined that Claimant was not eligible to receive regional center services. Specifically, the multi-disciplinary team determined

that Claimant was not substantially impacted by an intellectual disability, ASD, cerebral palsy, epilepsy, or a condition similar to intellectual disability. The multi-disciplinary team noted that the WAIS-II and VABS yielded results in the average and high average range, and the results of the ADOS-2 yielded a score that fell below the autism spectrum cut-off. As such, the multi-disciplinary team determined that Claimant was ineligible because she did not exhibit three or more areas of substantial impact due to a developmental disability.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing to contest Service Agency's proposed denial of Claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-3.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her to prove by a preponderance of the evidence that she meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. 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 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. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include 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.

4. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, Claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (j)(1):

"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:

(A) Self-care.

(B) Receptive and expressive language.

- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

5. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/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; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;

- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines," and the "group shall include as a minimum a program coordinator, a physician, and a psychologist."

7. In addition to proving that she suffers from a "substantial disability," Claimant must show that her 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: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as "[d]isabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

8. Here, the preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services. Specifically, Claimant failed to demonstrate that she has a "substantial disability" within the meaning of Welfare and Institutions Code section 4512, subdivision (1)(1), and California Code of Regulations, title 17, section 54001. The psychological assessment reports mentioned no significant functional limitations in at least three of the following seven areas of major life activity (as appropriate to her age): self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

9. Additionally, the psychological reports demonstrated no significant functional limitations in the remaining areas, such as mobility, and in receptive and expressive language skills. In the area of learning, the evidence shows that Claimant graduated from high school early, earned a bachelor's degree, earned a master's degree, and attended a doctorate program for a short period of time. In terms of self-care, self-direction, capacity for independent living, and economic self-sufficiency, the evidence shows that Claimant lives in her own apartment, pays her own bills, takes care of herself and a dog, makes her own appointments, and earns income through her job as a case aid for Gateways Hospital.

10. Another basis for finding Claimant ineligible for regional center services stems from the fact that she does not have a "substantial disability" (as defined in the Lanterman Act and Title 17 of the regulations) resulting from one of the five qualifying conditions specified in Welfare and Institutions Code section 4512, specifically, autism, intellectual disability, cerebral palsy, epilepsy, or a condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. No evidence was presented demonstrating that Claimant has diagnoses of cerebral palsy, epilepsy, or intellectual disability or a closely related condition. Additionally, Claimant proffered no credible evidence demonstrating that she has autism. While a Kaiser evaluator suggested Claimant could have Asperger's Syndrome or potentially ASD, neither that evaluator nor any psychological assessors since has diagnosed Claimant with ASD. In fact, Claimant scored well below the autism spectrum cut-off on the ADOS-II.

11. Based on the foregoing, Claimant is not eligible for regional center services under the Lanterman Act. As such, Claimant's appeal shall be denied. (Factual Findings 1-18; Legal Conclusions 1-11.)

ORDER

Claimant's appeal is denied. Service Agency's determination that Claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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