BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: **SAMANTHA F.** **Claimant,** **vs.** **NORTH LOS ANGELES COUNTY REGIONAL CENTER,** **Service Agency.**	**OAH No. L 2006120058**

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on January 8, 2006, in Van Nuys, California.

Samantha F., claimant, was represented by her grandmother and legal guardian, Barbara C.

North Los Angeles County Regional Center (Service Agency) was represented by Rhonda Campbell, Contract Officer for the Service Agency.

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

ISSUE

Is claimant eligible for regional center services based on autism, mental retardation, or "the fifth category" (a disabling condition "found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation") pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

FACTUAL FINDINGS

1. Claimant is a nine-year-old girl who claims to be eligible for regional center services based on her contention that she suffers from autism disorder, mental retardation, and/or from a disabling condition found to be closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation, also known as the "fifth category."

2. The Service Agency determined that claimant is not eligible for regional center services because she does not suffer from autism, mental retardation or from a disabling condition under the "fifth category" as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title17, section 54000. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Act. Claimant filed a request for a hearing and this matter ensued.

3. In October 2004, School Psychologist Elissa Luecke assessed claimant and administered the Woodcock Johnson III Achievement Test. Claimant scored in the average range in all areas of the test, including reading, math and written expression. However, claimant had a moderate articulation delay.

4. On April 12, 2005, Mary J. O'Conner, Ph.D., evaluated claimant in connection with a social skills research study that was conducted at UCLA. Claimant scored in the low average to average across the battery of tests that were given to her. Claimant scored in the average range in the communication domain, below average range in cognitive and non-verbal skills, while scoring in the average range in the verbal skills area.

5. On October 25, 2005, a social assessment was performed by Jill Nakahira, Intake Service Coordinator for the Service Agency. Ms. Nakahira determined that claimant exhibited deficits in learning and communication skills.

6. In February and March 2006, Janet Robertson, School Psychologist, performed an assessment of claimant. Ms. Robertson administered the Woodcock Johnson Achievement Test III wherein claimant scored in the average range in reading, math and written language. Ms Robertson also administered the Test of Visual Perceptual Skills – Revised, and Test of Auditory Perceptual Skills – Revised. Ms. Robertson found that there is a severe discrepancy between claimant's ability and achievement due to deficits in visual perception, auditory memory and sequencing skills. Finally, Ms. Robertson opined that claimant appears to meet the criteria for a specific learning disability. Pursuant to the March 2006 IEP, the school district agreed to provide Resource Specialist services totaling 150 minutes a week.

7. On March 7, 2006, David Millett, M.D., Ph.D., performed a "Wake/Sleep EEG." The results of the EEG indicated, "No interictal epileptiform discharges, focal slowing, or electrographic seizures were noted during this recording." Although, Dr. Millett noted that a normal EEG does not rule out a diagnosis of an underlying seizure disorder he did not make a diagnosis.

8. On June 9, 2006, Speech and Language Pathologist Mary Grover assessed claimant and diagnosed her with mild articulation/phonological delay and a possible mild expressive language delay, and recommended speech therapy. Claimant currently receives speech and language therapy at her school.

9. On June 29 2006, respondent was examined by Vipul J. Parikh, M.D. Dr. Parikh found that claimant was alert and oriented, her cranial nerves II-VII were intact, and her gait was normal. However, claimant exhibited a mild delay in verbalizing and answering questions. Dr Parikh did not diagnose a seizure disorder. He noted that "claimant's unusual staring episodes may be a behavior phenomenon, based on prior neurological evaluation exams."

10. Jaime Mejlszenkier, M.D., a Pediatric Neurologist and the Director of Medical Services at NLACRC, testified that based on his review of the reports issued by Drs. Millet and Parikh, claimant does not suffer from cerebral palsy, epilepsy or seizure disorder. Dr. Mejlszenkier's testimony was persuasive and claimant did not present evidence to rebut his testimony.

11. On July 13, 2006, Eva S. Tauber, L.C.S.W., performed a mental health assessment pursuant to an AB3632 referral from the Los Angeles Unified School District (LAUSD). In its referral, LAUSD noted that claimant had difficulties with academic functioning due to retention and learning problems, performance anxiety, mood instability, and low self esteem. Ms. Taber opined that claimant's academic and emotional problems have been impacted by a series of traumatic experiences in her life that have resulted in multiple losses, instability and broken bonds. Ms. Tauber recommended outpatient mental health services, including individual therapy, and consultation with a psychiatrist and medication if necessary. LAUSD representatives reviewed Ms. Tauber's recommendations and instituted an IEP team meeting where a plan was developed to meet claimant's educational needs, including therapy to be provided outside of the school setting.

12. In October 2006, a second social assessment was performed by Jill Nakahira, Intake Service Coordinator for the Service Agency. Ms. Nakahira determined that claimant exhibited deficits in learning and communication skills, and scheduled medical and psychological evaluations.

13. In a report dated October 12, 2006, Carlo DeAntonio, M.D., opined that claimant does not suffer form cerebral palsy, epilepsy or seizure disorder. Dr. DeAntonio based his opinion on a review of review of available medical records. Claimant did not present evidence that disputed the opinion set forth in this report.

14. On October 19, 2006, Anna Levi, Ph.D., performed a psychological evaluation on claimant. Based on her evaluation and observations, Dr. Levi reported as follows:

(a) Dr. Levi noted a history of traumatic experiences, including domestic violence between her parents, and loss of her surrogate grandfather. Further, claimant has a history of speech problems and social problems since kindergarten. Dr. Levi also noted a history of emotional outbursts and a high frustration level, and she struggles to keep up in school. Claimant plays primarily with younger children and wants to please other, especially her teachers. She is shy and dislikes reading aloud and speaking in front of classmates.

(b) Claimant was initially anxious at the prospect of being evaluated and did not want to separate from her grandmother. However, claimant later became more comfortable, cooperative, and amenable to testing. Dr. Levi noted that claimant referenced objects and picture appropriately, made good eye contact, and exhibited a good rapport with Dr. Levi. During the evaluation, claimant made many spontaneous comments and exhibited appropriate facial expression and gestures. She told a connected story with ease, and demonstrated an appropriate sense of what captures her interest. Claimant also reported that she has two friends at school, and Dr. Levi noted that claimant reciprocated with her during the evaluation. Finally, Dr. Levi noted that claimant did not exhibit, nor was it reported, that claimant engages in echolalia, repetitive or idiosyncratic language or behaviors, or persistent preoccupation with objects or restricted patterns of interest.

(c) Dr. Levi administered the Wechsler Intelligence Test for Children – IV. Claimant's overall intellectual abilities are in the low average range. She scored in the high end of the low average range for verbal abilities, whereas her non-verbal intellectual abilities were scored at the high borderline range. Claimant scored in the low average range in short term memory. Dr. Levi administered the WRAT-4 Math Computation where claimant demonstrated a high average performance. Dr. Levi also administered the Vineland Adaptive Behavior Scales II. The results of this test indicate that claimant's daily living skills are in the low average range. Her communication skills are average, and her social skills were determined to be in the low average range.

(d) Dr. Levi made the following diagnosis:

(1) Axis I: No Diagnosis

(2) Axis II: No Diagnosis

(3) Deferred to medical evaluation summary

(4) GAF = 61 (current)

(e) Dr. Levi did not recommend claimant for eligibility to receive regional center services because she does not have Autistic Disorder or Mental Retardation. She further recommends intensive therapy to address early traumatic experiences that may affect her current adjustment.

(f) Dr. Levi's report is thorough, persuasive and is supported by an attached "psychological testing data sheet," which sets forth in detail the tests administered and the corresponding scores. Claimant did not present expert opinion, by either testimony or written report, that rebuts Dr. Levi's report.

15. Catherine L. Scarf, Ph.D., the Supervising Psychologist for NLACRC, testified that, based on her review of the psychological assessments and reports submitted in this hearing, claimant does not suffer from autism, mental retardation or from a condition similar to mental retardation that requires treatment similar to that required for individuals with mental retardation. Dr. Scarf's testimony was persuasive and claimant did not present evidence to overcome Dr. Scarf's expert opinion.

16. Claimant did not establish that she is mentally retarded, or has Autistic Disorder or a seizure disorder. Further, claimant did not establish that she suffers from a disabling condition closely related to mental retardation or that requires treatment similar to that required for persons with mental retardation.

LEGAL CONCLUSIONS

1. Claimant is not eligible for regional center services based on a claim of autism disorder pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

2. Claimant is not eligible for regional center services based on mental retardation or "the fifth category" (a disabling condition "found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation") pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

3. California Code of Regulations, title 17, section 54000 defines "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions similar to mental retardation that require treatment similar to that required for mentally retarded individuals. The disability must originate before age 18, be likely to continue indefinitely, <u>and constitute a substantial handicap</u>.

4. For Claimant to be eligible for regional center services, it must be determined that she suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical. The condition must also constitute a substantial disability defined by section 54001 as follows:

> (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.

4. In this case, claimant did not prove that she has a major impairment of cognitive and/or social functioning which has resulted functional limitations in three or more of the above referenced areas. The evidence in this case established that claimant suffers from a learning disability, which is an excluded condition.

ORDER

The North Los Angeles County Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: January 12, 2007

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HUMBERTO FLORES
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.