

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NARBEH F.,

Claimant,

and

FRANK D. LANTERMAN
REGIONAL CENTER,

Service Agency.

OAH Case No. L 2005080226

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on December 22, 2005, in Los Angeles, California.

Janet A., Claimant's mother, represented Claimant.

Pat Huth, Attorney at Law, represented Service Agency.

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

ISSUE

Whether Claimant is eligible for Service Agency services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act (Lanterman Act.)¹

FACTUAL FINDINGS

1. Claimant was born on September 14, 1985, and emigrated from Iran at age 14. He resides with his parents and an older brother who attends a local university.

2. Claimant was diagnosed with Vitiligo, a skin condition, when he was five years

¹ Welfare and Institutions Code section 4500, et seq. All further references are to the Welfare and Institutions Code.

old. At age nine, he was diagnosed with Juvenile Ankylosing Spondylitis, a condition that causes pain in his knees, hips, and spine; he is under the regular care of a rheumatologist for the condition.

3. Claimant attended high school in the Glendale Unified School District until his graduation in June 2005. He received special education services and the latest Individualized Education Program (IEP), dated June 16, 2005, listed his eligibility on the basis of "Specific Learning Disability." The IEP contained the following eligibility statement: "Narbeh exhibits a significant discrepancy between ability and achievement in all academic areas due to a memory processing deficit which is not primarily the result of economic disadvantage, environmental, cultural or limited English proficiency." As accommodations, he received extended time for tests, alternative settings for tests, shortened assignments, and use of a calculator when appropriate.

4. Claimant's last triennial special education assessment report was prepared on January 10, 2005. The school psychologist administered the Wechsler Adult Intelligence Scales-III (WAIS-III) test and obtained a performance intelligence quotient (IQ) of 75, a number in the borderline range. The prior triennial test had yielded a similar IQ measure of 73.

5. Claimant's former English teacher and tutor, Cynthia Oei, has been able to intermittently observe his academic performance over the past four years. She notes that Claimant has processing problems in mathematics and reading. She provided supports, such as extra time and repeated instructions, and monitored his decision-making in order to help him complete tasks. He improved his reading ability under her tutelage, but regressed after she left for two years.

6. Claimant's school counselor referred him to Levon Jernazian, Ph.D. (Jernazian), for psychotherapy to address unspecified emotional and relationship issues. Dr. Jernazian did not conduct any testing and did not explain the level of his involvement with Claimant. He did enter the following diagnostic impression: "Moderate Mental Retardation. (Per Psychological Testing results provided by the school psychologist)." In his three-page report, Dr. Jernazian made the following statements under "Mental Status and Social Functioning":

"The subject's sensorium is clear, i.e., he is fully oriented to time, place and person. He seems normal from the perspective of productivity, relevance and coherence. No gross abnormalities in thought continuity, thought content, communication, memory and reality testing. No bizarre delusions or hallucinations were observed or reported.

"According to parents, however, Narbeh has demonstrated significant deviations from age-appropriate landmarks of developmental stages. He has consistently manifested delayed academic and social performance.

"Narbeh is having significant difficulty learning new information with repeated exposures, generalizing learning to new problems and settings. He requires special education

efforts and procedures. He also has difficulty with performing the tasks supportive of carrying out the decisions made. Given the defective quality of his thinking and understanding he has had a lifelong history of ineffective coping.

“Narbeh is sociable and easygoing. Skills of social communication, however, are pseudo mature. Range of emotions demonstrated are mostly appropriate to the ideational content and circumstances but of exaggerated quality.

“As far as the patient’s ability to engage in work-related activities is concerned, the range of activities is insufficiently wide to meet the requirements of productive, independent living. Considering his diagnosis, Narbeh would be experiencing diminished ability to respond to instructions and carry them through independently to completion in a work-related setting.”

Dr. Jernazian then notes that “prognosis for full recovery considering the nature of the Disorder, is guarded. I believe the main objective of therapy at this stage is to prevent further deterioration of social, psychological functioning and personality of this patient.”

7. Claimant’s mother is concerned about Claimant’s ability to function after high school. She notes that he is slower than other children and that he has been unable to obtain a job. She is concerned about his emotional maturity.

8. At the request of Service Agency, Avedis T. Yetenekian, Ph.D. (Yetenekian), a clinical psychologist, performed a psychological evaluation on May 5, 2005. Dr. Yetenekian met with Claimant and his parents and administered a variety of tests.

Dr. Yetenekian evaluated Claimant’s cognitive and academic abilities using the WAIS-III, the Test of Nonverbal Intelligence-3 (TONI-3), and the Wide Range Achievement Test-3 (WRAT-3). Dr. Yetenekian obtained a performance IQ of 89 through the WAIS-III, a number in the low average range. He correlated this measurement with the nonverbal TONI-3, where he obtained an IQ value of 84, in the borderline range. Reading and arithmetic subtests of the WRAT-3 revealed skills in the low-borderline range of competency. Dr. Yetenekian noted that Claimant’s anxiety and inattention depressed the WRAT-3 scores. In his opinion, the discrepancy between cognitive and academic scores was suggestive of learning impairments.

Based on parental report, Dr. Yetenekian determined Claimant suffered low to mild range adaptive impairments. Claimant is reportedly able to independently perform basic self-care and is able to assist with simple tasks. He can travel simple bus routes and is able to perform simple purchases. Claimant has twice failed to obtain his driver’s license, but Dr. Yetenekian opines that he may be able to succeed with additional accommodation.

Claimant participates in group activities with peers in his church, including playing in a band. In the past, teasing by peers had occasionally resulted in outbursts and aggression. However, Dr. Yetenekian opined, neither these social problems, nor anything else in Claimant’s

clinical presentation, was suggestive of autism.

Dr. Yetenekian's diagnostic impressions were: reading disorder; mathematics disorder; disorder of written expression; anxiety disorder NOS; and low average nonverbal intelligence. He recommended special education programs in the local community college, music lessons, counseling services and/or a psychiatric consultation, vocational services, and family encouragement to participate in community activities.

9. Claimant's mother followed some of the suggestions made by Dr. Yetenekian and cites Claimant's failure in college and vocational education as evidence of his eligibility for services under the Lanterman Act. In a letter dated December 7, 2005, Tracey B. Ziegler, M.S., wrote that Claimant has only been able to complete one unit at the Glendale Community College District, in physical education, and that he is enrolled in 5.5 units of physical education and an English as a Second Language class. The Department of Rehabilitation is not providing Claimant with services as it awaits a decision on Claimant's eligibility for Service Agency services.

10. There is no evidence that Claimant suffers from autism, cerebral palsy, or epilepsy.

11. The evidence did not establish that Claimant suffers mental retardation or from a condition closely related to mental retardation. Rather, the evidence shows that Claimant's cognitive abilities and adaptive functioning are at levels not consistent with such conditions. Intelligence testing shows that Claimant's cognitive level is in the borderline to low average range and his adaptive functioning is only mildly delayed.

Dr. Jernazian's conclusion that Claimant suffers from "Moderate Mental Retardation" is not supported by any testing data or persuasive opinion. On the contrary, the data on which he purportedly relied, the school district data summarized in factual finding number 4, is to the contrary. The school psychologist herself concludes that the data indicates borderline cognitive ability. Dr. Jernazian's comments regarding capacity for independent living appeared premised on the "Moderate Mental Retardation" diagnosis and, in any event, are too conclusory and unsupported to establish adaptive functioning deficits beyond the mild ones found through Dr. Yetenekian's more systematic testing.

12. On July 27, 2005, an interdisciplinary Service Agency team reviewed Dr. Yetenekian's report and the other available reports and concluded Claimant did not have an eligible developmental disability. Service Agency notified Claimant and his mother of the decision by letter dated July 27, 2005, and Claimant thereafter filed a fair hearing request.

LEGAL CONCLUSIONS

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. 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 mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

It was not established that Claimant has a developmental disability as defined in section 4512, by reason of factual finding numbers 1 through 12. There is no evidence Claimant suffers from autism, epilepsy, or cerebral palsy. His cognitive abilities and adaptive functioning are at levels not consistent with mental retardation, a condition closely related to mental retardation, or a condition that requires treatment similar to that required for mentally retarded individuals. Dr. Yetenekian’s assessment, supported by school district testing, shows Claimant’s cognitive ability is in the borderline to low average range and that his adaptive functioning is only mildly delayed.

As Dr. Yetenekian found, Claimant suffers from learning disabilities. Claimant may even suffer from psychological conditions, as suggested by Dr. Jernazian. However, these are not eligible conditions under section 4512.

ORDER

Claimant's appeal is denied.

Dated: _____

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.