BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ANDERSON P., Claimant, and EASTERN LOS ANGELES REGIONAL CENTER, Service Agency.	OAH Case No. L 2005080988

DECISION

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

Karin D. L., Claimant's mother, represented Claimant.

Felipe Hernandez, Chief of Consumer Services, represented Service Agency.

Service Agency moved to dismiss the Fair Hearing Request as untimely filed. Claimant's mother explained that the delay occurred because the letter denying eligibility was initially delivered to the incorrect address. The motion was denied and the matter proceeded to hearing.

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]

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

FACTUAL FINDINGS

1. Claimant was born on November 11, 1997. He lives with his mother and two siblings, aged eight and nine.

2. Claimant attends Jason Gascon Elementary School in the Montebello School District (District). He completed the first grade in a regular classroom and started the second grade, also in a regular classroom. He does receive special education services under the eligibility category of "speech and language impairment." District has determined that Claimant suffers severe deficits in receptive and expressive communication and provides speech and language services.

3. District suspected autism and referred Claimant to Service Agency for evaluation of eligibility. On February 22, 2005, Maria E. Garcia (Garcia), Assessment Coordinator with Service Agency, performed an initial assessment. Claimant's mother expressed concern about unusual behaviors, such as staring into space, talking to himself, and running in circles. Garcia recommended further assessment, including a psychological evaluation.

4. Thomas L. Carrillo, Ph.D. (Carrillo), a clinical psychologist, performed the psychological evaluation on February 22, 2005. Dr. Carrillo met with Claimant and his mother, and administered a variety of tests. Dr. Carrillo evaluated Claimant's cognitive ability using the Leiter International Performance Scale Revised (Leiter) and the Wide Range Achievement Test (WRAT). Claimant obtained a composite IQ score of 87 in the Leiter and attained academic achievement scores in the WRAT consistent with first grade level. Dr. Carrillo concluded that Claimant's cognitive abilities are within the low normal to normal range.

Claimant started talking at three to four years of age and displayed conversational content of a child younger than his chronological age of seven years and three months. Based on his analysis of the Vineland Adaptive Behavior Scales (Vineland) and the Peabody Picture Vocabulary Test, Dr. Carrillo concluded that Claimant's expressive and receptive communication abilities are within the low normal range.

Claimant's adaptive functioning was measured in the mild range of delay. His weakest area was socialization, where he attained an age-equivalent two years, three months. The daily living skills and communication measurement areas in the Vineland each revealed functioning at the 3 year, 1 month age level.

Claimant did not display any unusual or bizarre behavior to Dr. Carrillo. He appeared friendly and talkative, albeit somewhat immature. Because of communication delays and reported unresponsiveness when addressed, Dr. Carrillo screened the child for possible autism spectrum disorder. Claimant received an autism quotient score of 88 in the Gilliam Autism Rating Scale, which is outside the autism range. He received a score of 21.5 on another screening tool, the Childhood Autism Rating Scale, which was also outside the autism range.

Dr. Carrillo concluded that Claimant's presentation was consistent with a Diagnostic

and Statistical Manual of Mental Disorders Axis I diagnosis of Mixed Receptive-Expressive Language Disorder. He recommended continued special education services to address the communication delays.

5. Jerry A. Bradley, Ph.D. (Bradley), a staff psychologist employed by Service Agency, reviewed Dr. Carrillo's report and other documentation to evaluate eligibility. Dr. Bradley concluded that Claimant did not present an eligible condition within the Lanterman Act and agreed with Dr. Carrillo's diagnosis. Dr. Bradley noted that communication deficits, such as those displayed by Claimant, can lead to adaptive delays and behavioral problems, as the child is unable to properly process information or appropriately respond to stimuli.

6. Claimant's mother expressed concern that her son is "closing within himself." He speaks to himself, walks by himself, and does not always respond to her questions. He plays with friends, but may abruptly end his engagement.

7. Claimant's second grade teacher describes him as bright, but with problems processing information. He must be addressed individually and can only follow one instruction at a time. He becomes easily agitated if he does not understand what is expected of him. He does not respond well to noise and covers his ears. He is constantly talking to himself.

8. A letter from Yolanda Rebollo, M.D. (Rebollo), Claimant's pediatrician, was received in evidence. Dr. Rebollo listed diagnoses of speech delay, chronic constipation, and asthma, but offered no specific details or opinions regarding the presence of a developmental disability.

9. Service Agency concluded that Claimant did not have a qualifying disability and mailed a letter dated June 16, 2005, informing his mother of the decision. Apparently as a result of a postal error, the letter was not received by Claimant's mother until approximately one month later. She requested a fair hearing on August 18, 2005.

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

11. The evidence did not establish that Claimant suffers mental retardation or from a condition closely related to mental retardation. On the contrary, 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 low normal to normal range and his adaptive functioning is only mildly delayed.

12. The evidence did not establish that Claimant suffers from autism. Despite the communication deficits, social difficulties, and reported unresponsiveness and tuning out, recognized psychological tools and an expert's clinical evaluation tend to rule out autism. Moreover, in the opinion of two psychologists the observed autistic-like behaviors are better explained by Claimant's communication deficits. As his current teacher observed, Claimant can only follow one instruction at a time and becomes easily agitated when he does not understand

what is expected of him.

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 epilepsy or from cerebral palsy. His level of intellectual functioning leads to the conclusion that he does not suffer from mental retardation or from a condition closely related to mental retardation. Dr. Carrillo's assessment, supported by autism rating instruments and his clinical observations, rule out the presence of autism.

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.