

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Case No. 2011100090

JAVIER R.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

DECISION

The hearing in the above-captioned matter was held on February 14, 2012, at Lancaster, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. North Los Angeles County Regional Center (NLARC or Service Agency) was represented by Ruth Janka, Contract Administrator. Claimant Javier R. was represented by his mother, Patricia R.¹ An interpreter assisted Mrs. R. throughout the proceeding.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date.

STATEMENT OF ISSUES

The issue is whether Claimant is eligible for services under the Lanterman Act.

FACTUAL FINDINGS

1. Claimant Javier R. (Claimant or Javier) is a six-year-old boy who lives in the Antelope Valley with his adoptive parents and three siblings, who were also adopted. Claimant applied for and seeks eligibility and services from the Service Agency under the

¹ Initials are used for the family surnames to protect Claimant's privacy.

Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.²

2. The Service Agency denied eligibility by a Notice of Proposed Action (NOPA) which it issued on September 15, 2011. A letter that accompanied the NOPA stated, in general terms that Claimant did not suffer from a condition that brought him within the five areas of eligibility set out in the Lanterman Act. Claimant's parents filed a timely Request for Hearing and this proceeding ensued. (Ex.1.) All jurisdictional requirements have been met.

3. After Claimant applied for services, the Service Agency conducted a psychological assessment of the boy. The psychologist who conducted the assessment is Dr. Larry E. Gaines, Ph.D., a licensed psychologist who practices in Encino, California. Dr. Gaines administered several tests, he observed the boy, and he obtained information about him from his mother.

4. (A) Dr. Gaines administered an IQ test, the Wechsler Intelligence Scale for Children IV. This is a standardized IQ test regularly relied upon by psychologists to ascertain a person's intelligence.

(B) After completing the test, Dr. Gaines would not state a full scale, or overall, IQ score because Claimant's scores on the two main components of the test differed significantly. That is, on the verbal comprehension portion of the test, Claimant scored a 75, which is in the borderline area, and below average. On the other hand, in the area of perceptual reasoning, Javier's score was in the average range, because he scored a 90. (Ex. 4. See also, Ex. 13.)

(C) Dr. Gaines utilized the Autism Diagnostic Interview—Revised (ADI-R) to assist in assessing the possibility of Autistic Disorder. The results fell well short of the scores associated with a finding of Autistic Disorder, or even less pervasive but related disorders. (Ex. 4.)

(D) The Vineland Adaptive Behavior Scales were also used by Dr. Gaines to assess Claimant. The test provided evidence that Claimant suffers from impairment in his adaptive skills. His scores in the communication and daily living skills domains were 69, and his socialization score was a 70. Only his motor skills were in the average range, 90; his composite score was 71. (Ex. 4.)

5. Dr. Gaines did not find that Claimant suffers from Autism or Mental Retardation, or any other eligible disorder. Instead, he diagnosed Javier, provisionally, as suffering from Attention Deficit Hyper Activity Disorder (ADHD), Combined Type, as well

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

as a provisional diagnosis of Learning Disorder Not Otherwise Specified. He also deferred a diagnosis of possible mental health or behavioral disorders. (Ex. 4, p. 4.)

6. In September 2011, Claimant's school district performed a psycho-educational assessment, with an eye toward determining if he was eligible for special education services. Previously documented difficulties were noted, such as Claimant's difficulty in retaining information and sustaining effort in school, and significant behavioral challenges in the home. (It was noted that such behavioral problems were not prevalent in the school setting.) (Ex. 7, p. 2.)

7. The school district's assessment concluded that he had average cognitive ability, while showing difficulties in processing speed. (Ex. 7, p. 3.) Javier's visual and auditory processing skills were below average, the latter being described as "well below average." (*Id.*) All academic skills, with the exception of reading comprehension, were below average or well below average; receptive language development was deemed to be well below average. (*Id.*)

8. The school district assessment concluded that Claimant suffers from a Specific Learning Disability, which flowed from attention problems, as well as deficits in auditory and visual processing. He was made eligible for special education services. (Ex. 7, p. 4.)

9. On October 13, 2011, Claimant's mother participated in an informal meeting with a representative of the Service Agency, in an effort to resolve the issue of Claimant's eligibility. Mrs. R. shared documents generated by the boy's school, and she provided information about some of Claimant's problem behaviors in the home.

10. In light of the information provided, including the fact that the school had performed an assessment, it was agreed that the hearing in this matter, then set for November 18, 2011, would be continued, so that further documentation could be obtained. It was also agreed that the Service Agency would have Claimant observed in the school.

11. On December 14, 2011, Ann L. Walker, Ph.D., a clinical psychologist who sometimes performs assessments for the Service Agency, observed Claimant at his school, in the classroom. She also interviewed his teacher, and administered, to the teacher, tests designed to assess the possibility of autism. She used the ADI-R, which Dr. Gaines had administered to Claimant's mother in the summer of 2011, and Dr. Walker utilized the Gilliam Autism Rating Scale, second edition (GARS). (Ex. 9.)

12. Summarizing her observations of Javier, Dr. Walker noted that he was observed to focus on his work during most of the observation, and that he responded to efforts to focus him on his work. He cooperated with his teacher but needed frequent refocusing by her. He was never completely still but demonstrated good eye-contact with his peers when he chatted with them, and he appeared to communicate with other students in a friendly and reciprocal manner. (Ex. 9, pp. 3.)

13. During the teacher interview, Dr. Walker was informed that Javier has no friends, in part because he acts like a bully; he has been seen to hit and kick the other children, and does things to bother them. The teacher also observed that he does not demonstrate emotional reciprocity, and that if he is doing something that is bothering another child, he will increase that behavior once he realizes it is upsetting. The teacher also informed Dr. Walker that Claimant shows significant delays in language skills. However, she reported that the boy is able to share interests and enjoyment and is very proud of his work. (Ex. 9, p. 4.)

14. Dr. Walker diagnosed Claimant as suffering from ADHD, Learning Disorder Not Otherwise Specified, and Mixed Receptive Expressive Language Disorder. (Ex. 9, p. 4.)

15. After reviewing Dr. Walker's report, and the school district's psycho-educational assessment, the Service Agency maintained its position that Claimant is not eligible for services.

16. The Service Agency acknowledges, and the evidence shows, that Claimant is suffering from some conditions that impair him in his learning, social interactions, and his adaptive function. However, there is no evidence in the record that Claimant's impediments are the result of Mental Retardation, Autism, Epilepsy, or Cerebral Palsy. Nor does he suffer from a condition similar to mental retardation, or that can be treated in a manner similar to that used to treat mental retardation.

17. (A) The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association (hereafter DSM), is the most widely accepted source of diagnostic criteria for developmental disorders such as Mental Retardation and Autism. It teaches that the essential features of mental retardation are a significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning, in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. (DSM, p. 41; found at Ex. 12.) "Significantly subaverage intelligence" is defined as an IQ of about 70 or below; there is a possible error of measurement of approximately five points, depending on the IQ test used. (*Id.*) Put another way, "significantly subaverage" translates to IQ scores falling in the second percentile.

(B) As noted in the DSM, "when there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ can be misleading." (DSM, p. 42, at Ex. 12, p. 4.)

18. The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. The impairments must be gross and sustained. The diagnostic criteria for Autism are somewhat complex, requiring that the impairments in

communication, social interaction, and restricted and stereotyped behaviors manifest themselves in numerous specific ways. (See Ex. 11.)

19. It has not been established that Claimant suffers from Mental Retardation, Autism, Epilepsy, Cerebral Palsy, or a condition similar to Mental Retardation or that could be treated in the a manner similar to the treatment for Mental Retardation. While Claimant’s full-scale IQ was not stated, it is plain that with a performance IQ score in the average range he is not mentally retarded. Likewise, he is not suffering from Autistic Disorder, he can communicate and he does not show stereotyped behaviors. Likewise, he can make efforts at social interaction.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 and 2.

Legal Conclusions Pertaining to Eligibility Generally

2. The Lanterman Act, at section 4512, subdivision (a), defines developmental disabilities as follows:

“Developmental disability” means 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. . . . 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 individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.”

This latter category is commonly known as “the fifth category.”

3. (A) Regulations developed by the Department of Developmental Services (DDS), pertinent to this case, are found in Title 17 of the California Code of Regulations (CCR).³ At section 54000 a further definition of “developmental disability” is found which mirrors section 4512, subdivision (a).

(B) Under CCR section 54000, subdivision (c), some conditions are excluded. The excluded conditions are:

³ All references to the CCR are to title 17.

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests 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.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

4. Section 4512, subdivision (1), provides that,

“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:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

5. (A) Based on Factual Findings 3 through 19, Claimant has not established that he has an eligible condition prior to age 18, as is mandated by section 4512, subdivision (a), quoted in Legal Conclusion 2.

6. Based on all the foregoing, Claimant’s appeal must be denied, and he may not obtain services under the Lanterman Act.

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ORDER

The appeal of Claimant Javier R. from the decision denying his eligibility for services under the Lanterman Act is hereby denied, and the Service Agency's action is upheld.

February __, 2012

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.