

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CHAD C.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2011110728

DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on March 15, 2012, in Van Nuys, California. Rhonda Campbell, Contract Officer, represented North Los Angeles County Regional Center (Service Agency or NLACRC). Chad. C. (Claimant) was present and represented himself.¹

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on March 15, 2012.

ISSUE

Does Claimant have a developmental disability entitling him to eligibility for regional center services?

FACTUAL FINDINGS

1. Claimant is a 44 year-old male adult who currently resides with his mother. He has two sisters, has never been married and has no children. Claimant was diagnosed with Asperger's Disorder in August 2007 as a result of two forensic psychiatric evaluations ordered by the Deputy Federal Public Defender in a criminal proceeding to determine if Claimant was mentally competent to stand trial. Claimant testified that he was on criminal

¹ Claimant's last initials are used in this Decision, in lieu of his surname, in order to protect his privacy.

probation for a felony conviction as a result of mailing crank anthrax letters to targeted public figures. His mother and two sisters were interviewed for the 2007 psychiatric evaluations. Claimant's older sister also attended the hearing in this case.

2. On October 26, 2011, Service Agency determined that Claimant was not eligible for regional center services because he does not suffer from any qualifying developmental disability. Service Agency based its determination upon a review of the 2007 psychiatric evaluations performed during Claimant's criminal proceedings. Based on this determination, the Service Agency denied services to Claimant and issued a Notice of Proposed Action (NOPA) on October 26, 2011. Service Agency essentially considered whether Claimant was eligible for regional center services based upon mental retardation and autism. However, at hearing Claimant did not assert that mental retardation was a basis for eligibility. In fact he specifically requested that mental retardation and the fifth category basis for eligibility not be considered in this case.² Accordingly, whether Claimant is eligible for regional center services based upon autism is the only basis for eligibility at issue in this case. On November 15, 2011, Claimant submitted a timely request for fair hearing. All jurisdictional requirements have been satisfied to proceed to hearing.

3. On March 7, 2007, and August 13, 2007, at the request of the Federal Public Defender in Claimant's criminal proceeding, Claimant was evaluated by Dr. Sanjay M. Sahgal, M.D., Diplomate, American Board of Psychiatry and Neurology (Board Certification in Forensic Psychiatry) and Dr. J. Auturo Silva, M.D., Diplomate, American Board of Psychiatry and Neurology (Board Certification in Adult and Forensic Psychiatry). Both Dr. Sahgal and Dr. Silva concluded that Claimant easily met the criteria required for a diagnosis of Asperger's Disorder under the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, 4th Edition, Text Revision (DSM-IV-TR), but neither made a diagnosis of Autistic Disorder.³

4. The DSM-IV-TR states that "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 DSM-IV-TR describes the diagnostic criteria for autism to include the following:

- A. A total of six (or more) items from (1), (2), and (3), with at least two from (1), and one each from (2) and (3):

² The evidence presented does not support a conclusion that Claimant is mentally retarded or suffers from a condition similar to mental retardation or requires treatment similar to treatment that would be required for a person with mental retardation. Both psychiatric evaluations considered by the Service Agency concluded that claimant did not have significant delays in his cognitive development. Thus, mental retardation and fifth category eligibility is not at issue in this case. There was also no evidence to support eligibility based upon cerebral palsy or epilepsy.

³ Dr. Sahgal and Dr. Silva did not testify at the hearing. The psychiatric evaluations were admitted at hearing without objection by either party.

- (1) qualitative impairment in social interaction, as manifested by at least two of the following:
 - (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;
 - (b) failure to develop peer relationships appropriate to developmental level;
 - (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest);
 - (d) lack of social or emotional reciprocity;

 - (2) qualitative impairments in communication as manifested by at least one of the following:
 - (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);
 - (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;
 - (c) stereotyped and repetitive use of language or idiosyncratic language;
 - (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

 - (3) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:
 - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;
 - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals;
 - (c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);
 - (d) persistent preoccupation with parts of objects;
- B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.
- C. The disturbance is not better accounted for by Rett's Disorder or Childhood Disintegrative Disorder.

(DSM-IV-TR at pp. 70-71, and 75.)

5. The essential features of an Asperger's Disorder are severe and sustained impairment in social interaction and the development or restricted, repetitive patterns of behavior, interests, and activities. The disturbance must cause clinically significant impairment in social, occupational, or other important areas of functioning. In contrast to Autistic Disorder, there are no clinically significant delays or deviance in language acquisition. The DSM-IV-TR provides that the diagnostic criteria for Asperger's Disorder are as follows:

A. qualitative impairment in social interaction, as manifested by at least two of the following:

- (1) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;
- (2) failure to develop peer relationships appropriate to developmental level;
- (3) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest);
- (4) lack of social or emotional reciprocity;

B. restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

- (1) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;
- (2) apparently inflexible adherence to specific, nonfunctional routines or rituals;
- (3) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);
- (4) persistent preoccupation with parts of objects;

C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning.

D. There is no clinically significant general delay in language (e.g., single words used by age 2 years, communicative phrases used by age 3 years).

E. There is no clinically significant delay in cognitive development or in the development of age-appropriate self-help skills, adaptive behavior (other than in social interaction), and curiosity about the environment in childhood.

F. Criteria are not met for another specific Pervasive Developmental Disorder or Schizophrenia.

(DSM-IV-TR at pp. 84.)

6. On March 2, 2007, Dr. Sahgal prepared a psychological evaluation based upon interviews with Claimant on three separate occasions: January 16, 2007, January 23, 2007, and February 5, 2007. Dr. Sahgal also reviewed several related documents, including Claimant's medical records from the Los Angeles County Department of Mental Health. Dr. Sahgal diagnosed Claimant with Asperger's Disorder noting that Claimant met "nearly all of the criteria" specified in the DSM-IV-TR for Asperger's Disorder. He noted that Claimant had a history of psychiatric symptoms, including "obsessive/compulsive problems and perceived paranoid ideation" which required treatment with psychotropic medications. Dr. Sahgal believed, however, that Claimant's depression and irritability were the only psychiatric symptoms directly related to Asperger's Disorder. He opined that Claimant's "cognitive functioning" was "otherwise unaffected," noting that his memory, concentration, abstract thinking, and attention were all intact. Dr. Sahgal recommended that Claimant undergo individual psychotherapy to deal with his stress and basic social interaction, and continue with "adjunct psychotropic medication treatment" designed to reduce obsessive/compulsive behaviors.

7. On August 13, 2007, Dr. Silva prepared a psychiatric evaluation of Claimant. Dr. Silva's evaluation was more extensive than the evaluation performed by Dr. Sahgal. Dr. Silva conducted numerous interviews with Claimant, Claimant's mother, and his sisters. He also reviewed Claimant's mental health records from the Los Angeles County Department of Mental Health, evidence from the criminal case pending against Claimant, and Dr. Sahgal's March 2, 2007 psychiatric report. Dr. Silva diagnosed Claimant with Asperger's Disorder, Obsessive-Compulsive Disorder, Mood Disorder Not Otherwise Specified, and Attention Deficit Hyperactivity Disorder (ADHD) Not Otherwise Specified. He also concluded that Claimant suffered from various Personality Disorders, including Obsessive-Compulsive Personality Disorder and Narcissistic Personality Disorder.

8. Dr. Silva concluded that Claimant presented with many indicators "suggestive of an Autism Spectrum Disorder" and that he "easily" met criteria for Asperger's Disorder.⁴ He administered the Autism-Spectrum Quotient (AQ), "a self rated instrument designed to screen for pervasive developmental psychopathology of the autistic type, in adults." Claimant's score on this test was "32." Dr. Silva stated that: "this score was frequently seen in individuals who suffer from Asperger's Disorder or High Functioning Autism. This score

⁴ Specifically, Dr. Silva concluded that Claimant manifested several psychological characteristic consistent with qualitative impairments in social interaction. He noted that Claimant failed to develop peer relationships and lacked social or emotional reciprocity. He also concluded there was evidence that Claimant displayed restricted repetitive and stereotyped patterns of behavior, interests, and activities, noting Claimant's "encompassing preoccupation" with computers and his pressing interest in peripheral right wing politics.

strongly suggests that the defendant should be carefully evaluated for a higher functioning Autism Spectrum disorder. However, scores that are substantially lower than 32 may still suggest that an individual is in need to be carefully evaluated for an autism spectrum condition such as Asperger's Disorder or High Functioning Autism." In the end, Dr. Silva concluded that Claimant suffered from Asperger's Disorder through most of his lifetime.

9. According to Dr. Silva's evaluation, Claimant's history, including interviews with his mother and sister, showed that he may have qualified for "a condition known as high functioning Autistic Disorder at one point early in his lifetime." He noted that during Claimant's early childhood years, he "presented with noteworthy speech delays." Dr. Silva noted that Claimant did not talk until he was two years old, as reported by Claimant's sister, and that he began to talk in three word phrases when he was four years old. Claimant's sister told Dr. Silva that his speech was "clearly delayed." In contrast, Claimant reported that he was told by his mother that he did not begin to talk until he was four years old. Dr. Silva did not believe there were clinically significant delays in Claimant's speech development. He concluded that in spite of the childhood speech delays, Claimant's "current diagnostic picture is more consistent with DSM-IV-TR Asperger's Disorder," as opposed to an Autistic Disorder.

10. Because many of the symptoms associated with Asperger's Disorder are also present in individuals who suffer from autism, Claimant's assertion that he suffers from Autistic Disorder is necessarily a difficult distinction to make. Under the DSM-IV-TR, both Asperger's Disorder and Autistic Disorder require that an individual have qualitative impairment in social interaction and restricted and stereotyped patterns of behavior, interests, and activities. However, an Autistic Disorder additionally requires that an individual have qualitative impairments in communication, whereas Asperger's Disorder requires that there be "no clinically significant general delay in language (e.g., single words used by age 2 years, communicative phrases used by age 3 years)."

11. At hearing, Claimant and his sister testified that Claimant had significant delays in language development, stating that he did not talk until he was four years old. Claimant contends this language delay constituted a qualitative impairment in communication, and thus, should validate a diagnosis of an Autistic Disorder. Claimant provided no additional evidence to establish the nature and/or degree of his language delay or communication impairment. Records reviewed for the psychiatric evaluations performed by Dr. Silva and Dr. Sahgal indicated that Claimant began to speak when he was two years old and he used three word phrases by the time he was three years-old. This evidence contradicts Claimant's assertion that he did not speak until he was four years-old. There were no additional evaluations or evidence to support a conclusion that Claimant suffered qualitative impairment in communication, a necessary criteria for a diagnosis of Autistic Disorder. In light of Dr. Silva's and Dr. Sahgal's evaluations concluding Claimant suffers from Asperger's Disorder, and absent additional evaluations or assessments to controvert these evaluations, there is insufficient evidence to conclude that Claimant's Asperger's Disorder diagnosis was incorrect.

12. The DSM-IV-TR specifically states that Asperger's Disorder is not diagnosed if the criteria for Autistic Disorder are met. (DSM-IV-TR at pp. 74.) Thus, Claimant's uncontroverted diagnosis of Asperger's Disorder necessarily precludes a diagnosis of Autistic Disorder. Moreover, in addition to being diagnosed with Asperger's Disorder, Claimant was diagnosed ADHD by Dr. Silva. The DSM-IV-TR specifically states that a diagnosis of ADHD is not made if an Autistic Disorder is present. (DSM-IV-TR at pp. 74.) Claimant presented insufficient evidence to challenge the validity of his Asperger's Disorder and ADHD diagnoses.

13. Finally, Dr. Heike Ballmaier, Psy.D. BCBA, Supervisor/Psychological and Intake Services Units for the Service Agency, reviewed the psychiatric evaluations prepared by Dr. Sahgal and Dr. Silva. Dr. Ballmaier testified that the evaluations conclusively established that Claimant suffered from Asperger's Disorder and significant other mental health issues, but that there was no evidence to support a diagnosis of mental retardation or Autistic Disorder. She noted the absence of previous or subsequent evaluations to controvert the 2007 psychiatric evaluations diagnosing Claimant with Asperger's Disorder.

14. The evidence did not establish that Claimant has Autistic Disorder. Consequently, Claimant does not qualify for regional center services under a diagnosis of autism.

LEGAL CONCLUSIONS

1. Claimant has not established that he suffers from a developmental disability entitling him to regional center services. (Factual Findings 1 through 14.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a Claimant seeks to establish his eligibility for services, the burden is on the appealing Claimant to demonstrate that the Service Agency's decision is incorrect. Claimant has not met his burden of proof in this case.

3. In order to be eligible for regional center services, a Claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512⁵ 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, and includes mental retardation, cerebral palsy, epilepsy, autism, and

⁵ All further references are to the Welfare and Institutions Code unless otherwise indicated.

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.

4. To prove the existence of a developmental disability within the meaning of section 4512, a Claimant must show that he has a “substantial disability.” Section 4512, subdivision (1), and 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.

5. Claimant must show that his “substantial disability” fits into one of the five categories of eligibility in section 4512. These categories are mental retardation, epilepsy, autism and cerebral palsy, and a fifth category of eligibility described as having “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.” (Welf. & Inst. Code, § 4512.) The fifth category requires that the qualifying condition be “closely related” (Welf. & Inst. Code,

§ 4512) or “similar” (Cal. Code. Regs., tit. 17, § 54000) to mental retardation or “require treatment similar to that required for mentally retarded individuals.” (Welf. & Inst. Code, § 4512.) Under the Lanterman Act, “developmental disability” excludes conditions that are *solely* physical in nature. (Welf. & Inst. Code, § 4512, and Cal. Code. Regs., tit. 17, § 54000). California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities.

6. Here, Claimant has not established that he qualifies for regional center services based upon a diagnosis of autism, the only basis for eligibility sought by Claimant at hearing. Claimant was diagnosed with Asperger’s Disorder by two separate psychiatric evaluations in 2007. Asperger’s Disorder is not a qualifying developmental disability under section 4512, and is distinguishable from an Autistic Disorder in that there is a lack of delay or deviance in early language development for Asperger’s. A diagnosis of Autistic Disorder requires that there be a qualitative impairment in communication. Claimant presented insufficient evidence that he suffers a qualitative impairment in communication, and thus, has not met the necessary criteria for a diagnosis of Autistic Disorder. (Factual Findings 1 through 14).

ORDER

The Service Agency’s determination that Claimant is not eligible for regional center services is upheld. Claimant’s appeal is denied.

DATED: April 19, 2012

MICHAEL A. SCARLETT
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.