

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

NICHOLAS M.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011120144

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on January 23, 2012, in Los Angeles, California.

Nicholas M.¹ (Claimant) was present and was represented by his mother, Donna M. (Mother). Dwayne M. (Father) was also present. Fair Hearing Coordinator Johanna Arias-Bhatia represented the South Central Los Angeles Regional Center (Service Agency).

On January 23, 2012, oral and documentary evidence was received and argument heard. The record was held open without objection to allow Claimant to submit additional documentation by February 6, 2012, and to thereafter allow the Service Agency to submit a response by February 24, 2012. Claimant submitted additional documents, admitted as Exhibit C. The Service Agency did not submit a response. On March 9, 2012, the record was reopened to receive a complete copy of Exhibit 8, and to allow both parties to submit additional documents. Neither party made any additional submissions. The record was closed on April 10, 2012.

¹ The surnames of Claimant and his family have been omitted to protect their privacy.

ISSUE

Is Claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., to receive services from the Service Agency?

FACTUAL FINDINGS

1. Claimant was born on April 26, 1989. He resides with his parents.
2. On November 18, 2011, the Service Agency notified Claimant of its determination that he is not eligible for regional center services because he does not meet the criteria set forth in the Lanterman Act.
3. On December 1, 2011, Claimant filed a fair hearing request to appeal the Service Agency's determination regarding eligibility.
4.
 - a. On August 5, 2011, the Service Agency conducted a social assessment of Claimant. Claimant's functioning was assessed in six specific areas: motor skills, self-care, social, emotional/behavioral, cognitive, and communication.
 - b. In motor skills, it was noted that Claimant has use of his upper and lower extremities and that his feet tingle due to circulation problems. Further in the report, under "Health Status," it was reported that Claimant has no history of seizures or motor challenges.
 - c. In self-care, it was noted that Claimant performs all dressing and personal hygiene tasks, selects his own clothes and styles that he likes to wear, is toilet trained, feeds himself appropriately without spillage, prepares simple meals, performs routine chores, uses the transportation services provided by ACCESS to reach places in the community, and is able to stay home alone for the entire day and even overnight on one occasion.
 - d. Under social domain, Claimant was described as polite and reserved. It further stated that he does not have any friends. It is also noted that Claimant enjoys watching television, listening to music, playing video games, following sports on television, going to the mall to shop for clothes, and going to restaurants and movie theaters.
 - e. In the emotional/behavioral category, Claimant was described as a "serious, quiet, and affectionate man, who has a good relationship with his parents." Parents reported that he "requires patience and supervision due to behavioral challenges." It was noted that Claimant is sad and frustrated about not having a job. Claimant often speaks of having his own family. It is further noted that, when Claimant feels negative about life, he starts arguing with his parents. Claimant also speaks of wanting to leave his parents' home. It reports an incident in which Claimant lost his temper and got into a physical fight with

Father. According to the report, Claimant is “very independent and responsible with taking his medication.”

f. Under communication, it was noted that Claimant “expresses his needs and ideas with sentences and tells stories with details.” Claimant wants to be a professional football player and a rapper. It is noted that his speech is “clear and easily understood.” It is further noted that, in conversation, Claimant is engaging and does not have a problem making eye contact. He is able to follow one-step commands about activities of daily living, but is not able to follow two-step commands.

5. a. On September 8, 2011, Rebecca Holtzman (Dr. Holtzman), Psy.D., a clinical psychologist, assessed Claimant upon the Service Agency’s request. Dr. Holtzman observed Claimant, interviewed Father, and administered the Vineland Adaptive Behavior Scales – II (VABS-II), Test of Nonverbal Intelligence – Third Edition (TONI-3), Gilliam Autism Rating Scale – Second Edition (GARS-2), and the Picture Peabody Vocabulary Test – Fourth Edition (PPVT-4).

b. As part of her behavioral observations, Dr. Holtzman observed that Claimant was cooperative, compliant, and spoke clearly. Dr. Holtzman noted that Claimant’s developmental milestones were typical.

c. On the TONI-3, Claimant scored a 66, indicating below average non-verbal abilities. This score places Claimant in the range of mental retardation since a score below 70 is in the mental retardation range.

d. On the PPVT-4, Claimant scored a 74, which is in the borderline intelligence range. His receptive language skills were determined to be at the 11-year, seven-month old level.

e. On the GARS-2, a test that assists with detecting Autistic Disorder, the results were not sufficiently significant for a diagnosis of Autistic Disorder. A score in the 80s range is indicative of autism, and Claimant scored a 55.

f. On the VABS-II, Claimant scored as follows: Communication – 54 (functioning in the mental retardation range in comparison to same-age peers); Daily Living Skills – 72 (functioning in the borderline range in comparison to same-age peers), Socialization – 79 (functioning in the borderline range in comparison to same-age peers), and Adaptive Behavior Composite – 66 (functioning in the mental retardation range in comparison to same-age peers).

g. Dr. Holtzman diagnosed Claimant with mild mental retardation stating that Claimant “performed in the extremely low range in overall cognitive intellectual abilities and in the overall low (mild) range for adaptive functioning.”

6. Claimant attended a regular school program through fourth grade, and then transferred to a private school for fifth and sixth grades. He attended seventh through ninth

grades at Lifeline Charter School. In the tenth grade, he was assessed and determined to need special education services. Claimant's Individualized Education Program (IEP), dated October 11, 2004, states that he is eligible as a student with a Specific Learning Disability (SLD). Claimant received services under the designation of SLD in the eleventh and twelfth grades. According to Claimant's family, he has always had a difficult time in school. Claimant graduated from Gardena High School. After high school, Claimant attended the special disabilities program at Long Beach City College for two years, but never made much progress and did not receive passing grades.

7. At the age of 16, Claimant suffered a breakdown and was hospitalized in a children's psychiatric hospital in Pasadena, California. Specifically, Claimant was standing in his room and had a bowel movement all over himself. Mother took Claimant to the hospital, where he stayed for three weeks. Claimant was diagnosed with Schizophrenia and has been receiving psychiatric care ever since that time.

8. At hearing, Claimant's parents explained that, after Claimant suffered the breakdown, he changed quite a bit. Claimant had to relearn skills such as eating and bathing. Father explained that Claimant had to be told when to get in and out of the shower, and when to get dressed. Father also explained that Claimant would sometimes sit quietly and repeat his last word. Mother explained that, before his breakdown, Claimant never attempted to harm anyone; whereas, now Claimant is more agitated. Father described Claimant as being "sociable, playful, and active" before his breakdown. He also stated that Claimant used to be very expressive and communicative. Now, Claimant is very reserved and withdrawn; he is upset and angry. Claimant wants to lead a normal and productive life. Claimant would like to get a job and be independent and his inability to do so has caused him to be frustrated and angry, often resulting in arguments with his parents.

9. SCLARC's core staffing team considered Claimant's eligibility for regional center services, and determined that Claimant does not have a developmental disability as defined by the Lanterman Act. Dr. Sandra Watson, SCLARC's staff psychologist, participated in the core staffing team's review of Claimant's possible eligibility. The team considered Dr. Holtzman's psychological assessment, the Service Agency's social assessment, records from Claimant's psychiatrist Dr. James Jen, as well as school records. Dr. Watson testified that the team concluded that Claimant is ineligible for regional center services, even though Dr. Holtzman diagnosed Claimant with mild mental retardation, since Claimant did not demonstrate signs of mental retardation prior to the age of 18. Dr. Watson noted that Claimant's IEP stated that Claimant could "write and complete cohesive sentences with average ability." Dr. Watson testified that Claimant's deterioration could be the result of his psychiatric condition.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, § 115.)

2. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as “a disability that originates before an individual attains age 18 years, 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 individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a).)

3. California Code of Regulations, title 17, section 54000 provides:

(a) “Developmental Disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(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 psychosocial 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. California Code of Regulations, title 17, section 54001, subdivision (a) provides:

(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. In this case, no argument or evidence was presented to establish that Claimant has cerebral palsy, epilepsy, or autism, and there was no contention that he has any of these conditions.

6. The evidence also indicates that Claimant does not have mental retardation, or a condition closely related to mental retardation. Although Dr. Holtzman concluded that Claimant is mildly mentally retarded, the evidence shows that Claimant scored in the borderline intelligence range. Claimant's diagnosis of mild mental retardation came at the age of 22, and sufficient evidence was not presented to demonstrate that he suffered from mental retardation prior to the age of 18. This is not to say that Claimant does not suffer from a learning disability. However, a school providing special education services to a student under the designation of specific learning disability is insufficient to establish

eligibility for regional center services. Special education law is distinct from the Lanterman Act, and the requirements to receive special education services are less stringent than those of the Lanterman Act.

Claimant also did not present sufficient evidence to show that he qualified under the fifth category, i.e., a disabling condition found to be closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation. This fifth category is intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior who do not have a disabling condition under the Lanterman Act.

Even if Claimant has mild mental retardation or a disabling condition within the fifth category, Claimant did not prove that his disability constitutes a substantial disability as defined by the California Code of Regulations, title 17, section 54001, subdivision (a). He did not show significant functional limitations in three or more of the defined categories. On the contrary, the evidence revealed that Claimant performs all self-care tasks, possesses expressive and receptive language skills, uses transportation services provided by ACCESS, and has appropriate motor skills. Indeed, Claimant did suffer from mental deterioration after suffering his breakdown at the age of 16. However, Claimant's having to relearn basic tasks, along with the social and behavioral changes exhibited by Claimant after his breakdown, show that his mental deterioration may be linked to his psychiatric illness. Under these circumstances, Claimant is not eligible to receive Service Agency services, by reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 5.

ORDER

Claimant Nicholas M.'s appeal is denied; South Central Los Angeles Regional Center's decision denying Claimant's request for regional center services is affirmed.

DATED: April 24, 2012

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.