

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

In the Matter of:

KENNETH B.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2012060065

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on July 18, 2012, in Lancaster, California.

Kenneth B. (claimant) was represented by his mother.

North Los Angeles Regional Center (regional center) was represented by Rhonda Campbell, Contract Officer.

Evidence was received and the matter was submitted for decision.

ISSUE

Is claimant eligible for regional center services based on any of the four qualifying conditions¹ or on “the fifth category” (a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation) pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

¹ The four qualifying conditions for regional center services are autism, cerebral palsy, epilepsy, or mental retardation.

FACTUAL FINDINGS

1. Claimant is a 15-year-old boy who is requesting eligibility for regional center services based on his contention that he suffers from a disabling condition found to be closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation, also known as the “fifth category.”

2. On April 27, 2012, the Service Agency issued a Notice of Proposed Action informing claimant he is not eligible for regional center services because the regional center determined that he does not suffer from autism, mental retardation, cerebral palsy, epilepsy, or from a disabling condition under the “fifth category” as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title 17, section 54000. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Developmental Disabilities Services Act (Lanterman Act). Claimant filed a request for a hearing and this matter ensued.

3. Claimant’s mother testified at the hearing. She indicated that claimant has behavior and emotional problems. In fact, claimant is currently residing in juvenile hall because of his conduct and because of poor school attendance. In addition, claimant has trouble focusing in his classes.

4. Claimant was evaluated by Sandi Fischer, Ph.D., on April 5, 2012. Dr. Fischer utilized the Wechsler Intelligence Scale for Children – Fourth Edition (Wechsler-IV). Dr. Fischer also interviewed claimant’s mother and considered prior psychological evaluations conducted by school psychologists as well as school records. The results of the evaluation were as follows:

(a) Claimant’s mother reported to Dr. Fischer that claimant was ditching his high school classes and was not behaving well and stated that he was “lashing out.” She also provided Dr. Fischer with an April 14, 2011 Individualized Education Program (IEP). The IEP stated that claimant was deemed eligible for special education services based on specific learning disability. Claimant attended Specialized Academic Instruction classes and received psychological services twice a month. This included individual and family therapy. The IEP notes that claimant exhibits poor judgment and described his behavior as explosive and unpredictable. The IEP also noted that claimant’s cognitive skills to be in the low average range; his auditory and visual skills in the average range; his memory in the average range; and his attention and sensory motor skills in the below average range. Finally, the IEP noted that claimant’s reading comprehension was at the third grade level, while his math and writing skills were at the fourth grade level.

(b) As noted above, Dr. Fischer administered the Wechsler-IV to determine claimant's cognitive functioning. Claimant's verbal comprehension, perceptual reasoning, and working memory skills fell in the extremely low range but Dr. Fischer opined that these scores were not valid assessment of his skills. On some of the subtests, claimant was not able to answer even the most basic items which are typically presented to six-year-old children. Dr. Fischer noted in her report that "[claimant's] answers were highly unusual if not bizarre."

(c) Regarding claimant's verbal comprehension, Dr. Fischer noted that claimant's ability to explain the similarity of two items (e.g. peas and carrots) fell in the extremely low range. Claimant's expressive vocabulary score was extremely low although there was significant variability in his functioning. Dr. Fischer noted that "it is highly unusual for someone to be able to accurately define words such as pest and fable and yet be unable to accurately name a picture of a car or flower."

(d) In the area of perceptual reasoning, Dr. Fischer noted that claimant scored in the extremely low range. On the Matrix Reasoning Subtest, claimant did not complete a puzzle-like task. During the Picture Concepts Subtest, claimant was asked to select pictures of items that were related. Dr. Fischer noted that claimant covered his eyes with his hands and pointed to two items that were not related.

(e) To determine claimant's behavioral/social/emotional functioning, Dr. Fischer reviewed school records and interviewed claimant's mother. Dr. Fischer noted in her report that "[claimant] experienced significant emotional and behavioral problems since at least the third grade. . . . Since his placement at Juvenile Hall, Kenneth has been prescribed Seroquel, which he reported is for ADHD and mood swings."

5. Based on the assessment, Dr. Fischer was unable to render an accurate diagnosis because claimant's presentation during the testing was highly unusual and contradictory. Based on her observations and assessment, Dr. Fischer found that claimant "seemed significantly different from the way his mother and teacher described him." In addition, claimant's mother did not describe significant educational or social delays that would accompany the level of developmental delays that he exhibited. Dr. Fischer also noted that claimant was able to name his medication and explain why it was prescribed, but was unable to name common objects. He was able to define some difficult words but could not define the word "cow." Dr. Fischer stated that "[claimant's] presentation raises the possibility that claimant is either experiencing significant deterioration in his mental health or he desired to do poorly on the testing in the hopes that this would change his current circumstances."

6. According to claimant's IEPs from 2003 to the present, claimant was found eligible for special education based on a "specific learning disability." Claimant was evaluated by a school psychologist in December 2005, when claimant was in the third grade. The psychoeducational report notes that, according to his teacher, claimant had excellent reading fluency but was working below grade level in math because of his inability to focus and his hyperactivity. The school psychologist noted that claimant's cognitive functioning was within the low average range.

7. A review of claimant's IEPs from 2003 to the present indicates that claimant behaviors in school worsened over the years. His 2011 IEP states in part

[Claimant] may have difficulty interacting appropriately with staff and pers [sic]. He is prone to walk out of the classroom and out to the playground, refusing to work. He often ignores the directives of his current teacher and of the para-educators who work with him. His defiant and emotional behaviors interfere with his work completion and learning effort. . . . Kenneth is working at a 4th grade level in the area of writing. . . . He continues to struggle with organization, focus, capitalization and punctuation. Reading skills are within the 3rd grade level. He continues to struggle with concepts and math calculations skills. . . . Oral language skills are measures to be within the average range. . . . Last triennial review indicates clinically significant difficulties in the areas of atypicality, withdrawal, conduct problems, school problems, attention, adaptability and communication. Kenneth is reported as having explosive, unpredictable behavior, awkwardness, poor judgment, difficulty in social situations and as having poor social relationships. . . . Kenny is absent and tardy frequently. . . . Academically, he is below grade level, which could be the product of focus. . . . Kenny is a very capable student but lacks motivation.

8. Under claimant's 2012 IEP, he was found eligible for special education services because of a specific learning disability, ADHD and "other health impairment." Claimant's past difficulties with hyperactivity and impulsivity were reported to be stabilized with medication.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 17, section 54000, defines "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mentally retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability.

2. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as follows:

(l) “Substantial disability” means 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 determined by the regional center, and as appropriate to the age of the person:

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

3. California Code of Regulations, title 17, section 54001, defines substantial disability as follows:

(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; and
- (G) Economic self sufficiency.

4. For Claimant to be eligible for regional center services, it must be shown that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

5. Claimant has not established that he has autism disorder, cerebral palsy, epilepsy or mental retardation. Therefore, claimant is not eligible for regional center services based on any of the above conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a),

6. Claimant is not eligible for regional center services based on the fifth category (a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation) pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000. Claimant did not present sufficient evidence that he has a major impairment of cognitive and/or social functioning which has resulted in functional limitations in three or more areas of major life activity. The evidence in this case established that claimant suffers from a learning disability, ADHD, and has an emotional disturbance, but claimant did not establish that he suffers from a substantial developmental disability, which has been caused by one of the four qualifying conditions set forth above or based on the fifth category.

ORDER

The North Los Angeles County Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: July 25, 2012

/s/

HUMBERTO FLORES
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.