

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J. H.,

Claimant,

and

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH Case No. 2012070559

DECISION

This matter was heard by Mark Harman, Administrative Law Judge, Office of Administrative Hearings, in Lancaster, California, on December 11, 2012.

Ruth Janka, Contract Administrator, represented North Los Angeles County Regional Center (Service Agency).

Claimant was not present and was represented by his mother, A. H. (Mother), who is his authorized representative. Mother was assisted by B. H., Claimant's sister.¹

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on December 11, 2012.

ISSUE

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

¹ Initials or family titles have been used to protect the privacy of Claimant and his family.

FINDINGS OF FACT

1. Claimant is 24 years old. He lives with his parents. He is unable to care for himself independently. Mother must prompt him to take showers and change his clothes. He cannot cook meals. He makes purchases only with assistance. He can take public transportation, but only on one route – to and from the mall. He has never tried to drive a car. He has never held a job and he cannot pay bills or write checks.

2. He was arrested three years ago for attempting to steal Mother's jewelry and money. The circumstances involved other adults who influenced Claimant to steal these items; apparently, he could not understand the nature of wrong or right. Mother states that Claimant enjoys watching sports on television and listening to music all day, when he is not sleeping. He does not have friends. Mother is asking for help from the Service Agency.

3. Claimant was hospitalized at least twice in the past two years on psychiatric holds. (Welf. & Inst. Code, § 5150.) He was admitted in the adult inpatient unit at Kedren Community Mental Health Center (Kedren) on November 22, 2011, because he had held a knife and pointed it at his parents. He had been attending Palmdale Outpatient Mental Health Clinic, where he had been prescribed psychotropic medication. At Kedren, he told doctors he was having angry outbursts and hearing off and on voices. The doctors restarted his medication, Invega, at a higher dose, and added Cogentin. Claimant was enrolled in all available groups and activities. He, at times, continued to appear to be responding to internal stimuli. The Invega dosage was increased, and he became less restless, his thought processes became more organized, and he was less guarded and more cooperative. Claimant remained at Kedren until December 8, 2011. His discharge diagnosis was Schizoaffective Disorder.

4. The Service Agency maintains that Claimant has a mental disorder that substantially impacts his ability to function, and which is an excluded condition from the definition of developmental disability. The Service Agency acknowledges that Claimant's scores on a May 2012 cognitive assessment were very low. In contrast, Claimant's scores on standardized academic achievement tests administered while he attended school, although variable from year to year, suggested that he had some academic skills falling in the average range. The Service Agency asserts that a person with significantly delayed cognitive functioning would not be able to produce scores "that would be consistent with the level of academic achievement expected to be obtained." (Exhibit 10.)

Early History

5. Claimant sat at 10 months, crawled at one year, and walked by 16 months, but his speaking was significantly delayed. He used his first words at three years and put two words together when he was four. During preschool, he did not pay attention to his teacher and did not want to be involved in what was happening in the classroom. He was retained in kindergarten and was almost seven when he began first grade. He attended general education classes throughout his schooling. He had mostly average grades through the fifth grade, but later, he struggled and was not passing. He dropped out in 10th grade because he could not do the work.

6. During his school years, Claimant's family was concerned because he did not follow instructions and needed a lot of prompts or assistance to perform simple tasks. He enjoyed physical education but reportedly did not enjoy any academic subjects. His sister spent many hours tutoring him with his homework. Mother asked the school district to perform an assessment, but nothing was done. Mother knew Claimant had problems grasping the material ("it was hard for him to learn"), and again asked the district for help. The district's response was, "He is fine, and you are exaggerating." The district provided no help.

7. After he dropped out of school, he became involved with people who were manipulating or taking advantage of him. He was becoming more aggressive toward his parents. He became more withdrawn. These are significant behavioral changes, but Claimant's evidence does not demonstrate that he had a developmental disability before the age of 18.

8a. Claimant's parents felt his behaviors were going beyond their ability to cope and, in 2011, they sent him to live with his grandmother in Georgia. Claimant continued to exhibit a lack of attention and focus while he was in Atlanta. He was referred to Jack Grisham, Ph.D. (Grisham), for a psycho-educational evaluation to determine his current levels of functioning, to address his attention difficulties, and to determine whether Claimant was capable of independent living. Using the Weschsler Adult Intelligence Scale-Fourth Edition, Grisham derived composite scores that suggested Claimant's "application of verbal skills and information to the solution of new problems is in the extremely low range and his ability to think in terms of visual images and manipulate them with fluency is in the borderline range. [Claimant's] composite scores also suggest that his information processing capacity is in the low average range and his psychomotor speed is in the borderline range."

8b. Grisham derived a full scale score of 71, which is within the borderline classification of intellectual functioning and which places Claimant in the third percentile of persons his age. In Grisham's report dated July 23, 2011, Grisham wrote that, "At times he appeared to be in 'slow motion' taking a while to convey his thoughts and process information [possibly a side effect of his medication.] [¶] . . . [¶] [He] did best with explicit directions and models. At times, [his] scores were penalized in that he completed items after the allotted time and thus could not receive credit. He required rewording of directions and reiteration of directions. He required prompting for maximum responses."

8c. Using the Woodcock-Johnson III Tests of Achievement, Grisham found, "When compared with [his] Full Scale Composite score, his achievement in Broad Reading, Broad Math and Broad Written Language are commensurate with what would be expected with his measured ability level. His achievement in Oral Language is below what would be expected." Grisham offered a diagnosis of Borderline Intellectual Functioning. He concluded that Claimant "appears to have the ability to learn necessary vocational, independent and academic skills, but at a rate and depth below average same age peers. In order to grasp new concepts, [he] may need more time, more repetition, and often more resources from others to be successful. Reasoning skills may be delayed, which makes new concepts difficult to learn." Finally, Grisham did not believe Claimant met the diagnostic criteria for Attention Deficit Hyperactivity Disorder.

The Service Agency's Psychological Assessment

9. Mother sought an eligibility determination for Claimant from the Service Agency in 2012. Sandi J. Fischer, Ph.D. (Fischer), a psychologist and a member of the Service Agency's multi-disciplinary eligibility team, conducted an assessment of Claimant on May 8, 2012, to determine Claimant's current levels of cognitive and adaptive functioning as these relate to his eligibility for regional center services. Fischer administered the Stanford-Binet-Fifth Edition (S-B-V), a cognitive assessment, the Norris Educational Achievement Test-selected subtests, the Adaptive Behavior Assessment System, Second Edition (ABAS-II), and the Gilliam Autism Rating Scale-Second Edition (GARS-2). Mother was the rater for the latter two assessments. On the S-B-V, Claimant's Nonverbal, Verbal and Full Scale I.Q.'s fell in the significantly delayed range of functioning.

	Composite Score	Percentile Rank	Qualitative Description
Nonverbal I.Q.	60	0.4	Mentally Retarded
Verbal I.Q.	63	0.7	Mentally Retarded
Full Scale I.Q.	60	0.4	Mentally Retarded

Claimant's specific skills, as measured by the subtests, ranged from significantly delayed to average. His relative strengths were Nonverbal Visual Spatial Processing and Verbal Working Memory. Fischer noted that the latter requires attention and following directions, but not at quite an abstract level. Fischer also noted that some of Claimant's verbalizations during the testing were unusual. When told about a man who put his shoes on first and then the rest of his clothing and asked what was wrong with the story, Claimant said that the problem was the he was "wearing boots." Fischer tested the limits and asked Claimant what was wrong with that, and Claimant said, "Because you need to wear tennis shoes." When asked what was wrong with a statement about melted icebergs in the Caribbean Sea, he said, "The Caribbean Sea is melted because it's supposed to be the Caribbean Sea."

10. Fischer, in addition, reviewed the standardized test scores from Claimant's permanent records from the school district. In her testimony, Fischer noted that these scores presented "something of a picture prior to the age of 18." She noted that his scores varied from year to year, but "the vast majority fell in the average range." Fischer did not explain fully why scores in the same academic subject areas were so inconsistent from year to year. She opined that Claimant had a verbal learning disorder.

11. Fischer reviewed Grisham's 2011 evaluation, noting that Grisham did not state any psychiatric conditions, nor did Grisham refer Claimant to be examined or counseled by a psychiatrist. Using the ABAS-II, Mother's ratings of Claimant's adaptive functioning fell in the significantly delayed range in all areas assessed, including community use, home living, health and safety, leisure, self-care, and self-direction. Mother rated Claimant's academic skills as: sometimes able to read and write his name, write his address, check for correct change when he makes a purchase, and read and follow instructions after making a new purchase. Mother reported that Claimant could not find a number in a telephone book, measure length and height,

or write a note or email. Other deficits in the social area included frequently avoiding eye contact, only sometimes saying thank you when receiving a gift, only sometimes listening to another person's problems or talking about his feelings, never congratulating someone when something good happens, no friendships, and a lack of good relationships with family members.

12. Based on her clinical observations and review of records, Fischer concluded that Claimant did not suffer from autism; however, Mother's ratings of stereotyped behaviors on the GARS-2 indicated a very likely probability of Autism. In addition to infrequent eye contact, Mother indicated that Claimant sometimes stares at his hands, flicks his fingers rapidly, smells objects, spins objects, and rocks back and forth. Fischer observed none of these behaviors during the assessment. Mother also reported that Claimant sometimes walks on his toes, flaps his hands, makes high-pitched sounds for self-stimulation, and is self-injurious. Again, Fischer observed none of these behaviors and these behaviors were not reported in the limited records that Fischer reviewed.

13. In conclusion, Fischer did not believe Claimant had a developmental disability that would warrant regional center eligibility. She offered, as the most appropriate diagnosis, Cognitive Disorder Not Otherwise Specified. In her opinion, Claimant's mental health issues were having a negative impact on his thinking. She recommended continued mental health treatment, particularly medication management.

14. On June 12, 2012, the Service Agency notified Claimant that it had been determined he was not eligible for services under the Lanterman Act.

LEGAL CONCLUSIONS

1. 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).)

2. A person seeking to be made eligible must establish that he or she has one or more of the specified conditions, i.e., mental retardation, cerebral palsy, epilepsy, autism, or the so-called fifth category, and that this condition is substantially disabling. In this matter, no argument or evidence has been presented to establish that Claimant has cerebral palsy or epilepsy. Dr. Fischer has conducted a psychological evaluation and has concluded that Claimant does not have autism, mental retardation, or a condition closely related to mental retardation. Dr. Fischer's opinion with regard to the presence of mental retardation or a

closely related condition is based largely on Claimant's scores on academic achievement tests administered before age 18. Respondent's test scores in school indicate that he possessed abilities in some academic skill areas that were average, which generally is inconsistent with the presence of a global impairment of intellectual functioning.

3. Claimant has not presented any more persuasive evidence indicating that he had significantly impaired cognitive functioning before age 18. His scores on recent cognitive assessments indicate significantly impaired functioning, but Dr. Fischer suggests that these scores are better explained as a result of Claimant's diagnosed mental health condition rather than of a developmental disability. Dr. Fischer's testimony was largely uncontroverted and persuasive. Claimant's mental health condition, which is not closely related to mental retardation, is negatively impacting his thinking. Further, Claimant has not established that he requires the kind of treatment required for individuals with mental retardation. Accordingly, Claimant has failed to establish that he has a developmental disability as defined in the Lanterman Act.

ORDER

Claimant's appeal is denied.

Dated: February 25, 2013



MARK HARMAN
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.