

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KELLY W.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2012080259

DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on January 10, 2013, in Lancaster, California. Rhonda Campbell, Contract Officer, represented North Los Angeles County Regional Center (Service Agency or NLACRC). Kelly W. (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 January 10, 2013.

ISSUE

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

FACTUAL FINDINGS

1. Claimant is a 42 year-old male adult who currently resides with his girlfriend Elena Ramirez. Ms. Ramirez referred Claimant to the regional center to seek

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

eligibility for services. Although Claimant lives with Ms. Ramirez, he is described as being independent and able to live on his own. Claimant's

parents are deceased and there is no information regarding his developmental milestones as a child. According to Claimant, he was diagnosed with Friedreich's Ataxia when he was approximately 36 years old in 2006. Claimant began receiving Social Security benefits (SSI) when he was 36 years old. He currently receives \$866 per month in SSI benefits.

2. On July 19, 2012, 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 Social Assessment dated April 30, 2012, prepared by Veronica Salinas, a vendor for the Service Agency, a May 4, 2012, medical summary prepared by Margaret Swain, M.D., and a June 19, 2012, psychological evaluation prepared by Sandi J. Fisher, Ph.D. Based on this determination, the Service Agency denied services to Claimant and issued a Notice of Proposed Action (NOPA) on July 19, 2012. On August 3, 2012, Claimant submitted a timely request for fair hearing. All jurisdictional requirements have been satisfied to proceed to hearing.

3. There was no evidence presented regarding Claimant's medical or educational history prior to the age of 18 years old. Claimant presented no independent assessments or evaluations in support of his application for regional center benefits. Service Agency stated that attempts were made to obtain Claimant's school records for Los Angeles Unified School District, but efforts were unsuccessful. Apparently, Claimant's school records may have been destroyed in a fire.

4. On April 30, 2012, Service Agency had a Social Assessment performed on Claimant. The assessment indicated that Claimant presented as a "kind-hearted" easy-going gentleman. He responded to all questions asked, with noted weakness in articulation. He advised the assessor that he had been diagnosed with Ataxia and expressed concerns or difficulties he was having with reading comprehension, speech articulation, and pain during muscle spasms. Claimant stated that he had some difficulty with his motor skills including that he walked with an unsteady pace, that although he was able to jump and run, he is not as good as he used to be running and jumping. Claimant indicated that he once participated in sports, but that now he is no longer able to participate in sports. Claimant has full use of both arms and is fully ambulatory. He completes all self-care tasks independently, although slowly, including handling his finances. Claimant performs household chores such as yard work, taking out the trash and dish washing. Claimant told the assessor that he had a valid drivers' license and was able to drive a car, although at hearing he indicated that his ability to drive was becoming more difficult and he had a couple of car accidents in the last year. Claimant indicated that he did not receive special education or speech therapy services in school and that he attended high school through the 12th grade, although he did not receive a high school diploma. He stated he could not pass three exit examinations required to receive his diploma. The assessor noted that Claimant was able to engage in reciprocal conversations, could relate his experiences in detail, understood story plots in movies, and could follow multi-step directions.

5. On May 4, 2012, Dr. Margaret Swaine, M.D., reviewed available information provided by Claimant and noted his past medical history of Friedreich's Ataxia. Dr. Swaine indicated that Claimant's medical records had been requested, but not received, and that

based upon available information she could not conclude that Respondent suffered from epilepsy or cerebral palsy. On January 2, 2013, after receiving Claimant's medical records from Kaiser Permanente, Dr. Swaine confirmed her earlier conclusion that Claimant did not have epilepsy or cerebral palsy. Claimant's medical records indicated that he had been diagnosed with Spinocerebellar Ataxia, Hyperlipidemia, and gastro esophageal reflux disease (GERD). There were no records or information to support a conclusion that Claimant suffered from epilepsy or cerebral palsy or that such developmental disabilities had occurred prior to 18 years of age.

6. On June 19, 2012, Sandi J. Fischer, Ph.D., performed a psychological evaluation on Claimant. Dr. Fischer administered the Stanford-Binet: Fifth Edition and K-FAST tests, conducted a clinical interview, and reviewed available records provided by Claimant. Dr. Fischer considered whether Claimant had an Autistic Disorder, Mental Retardation, or a disabling condition closely related to or that required treatment similar to an individual with Mental Retardation. Behavioral observations by Dr. Fischer noted that Claimant smiled and made good eye contact when greeted and was pleasant throughout the assessment. During testing, Claimant was cooperative, compliant, and thoughtful in responding to test questions, which led Dr. Fischer to believe Claimant's test results were accurate.

7. Claimant's non-verbal, verbal and full scale I.Q. scores on the Stanford-Binet test fell within the mentally retarded range, although his index scores varied from borderline to the mentally retarded range. His subtest scores ranged from the mentally retarded to the average range. Claimant academic functioning as assessed using the K-FAST test was at the high end of the well below average range for Arithmetic skills, and his reading skills were in the well below average range. Claimant's sensor/motor functioning was documented as full use of all extremities, although his skills have deteriorated over time due to the Ataxia.

8. Dr. Fischer diagnosed Claimant with Phonological Disorder and Cognitive Disorder Not Otherwise Specified. Dr. Fischer testified that although Claimant had significant cognitive deficits as evidenced by the Stanford Binet and K-FAST test results, there were insufficient records to conclude that these deficits had an onset prior to the age of 18 years old, which is required to establish a developmental disability. She also testified that Claimant's medical condition, Friedreich's Ataxia, may have limited or affected Claimant's test performances and lowered his levels of adaptive and cognitive functioning.

9. "Friedreich Ataxia (FRDA) is characterized by slowly progressive ataxia with mean onset between age ten and 15 years and usually before age 25 years old. The disease is typically associated with dysarthria, muscle weakness, spasticity in the lower limbs, scoliosis, bladder dysfunction, absent lower limb reflexes, and loss of position and vibration

sense.” (Friedreich Ataxia - GeneReviews™ - NCBI Bookshelf (February 2, 2012) Sanjay I. Bidichandani, MBBS, PhD. And Martin B. Delatycki, MBBS, FRACP, PhD.) “FRDA is inherited in an autosomal recessive manner.” (*Ibid.*) Dr. Carlo DeAntonio, M.D., FAAP, testified on behalf of the Service Agency. Dr. DeAntonio described Friedreich Ataxia as an inherited neuro-degenerative disease that was not related to cerebral palsy, although some symptoms, i.e. the ataxia, are similar to symptoms related to cerebral palsy. Dr. DeAntonio

opined that Friedreich Ataxia was different from cerebral palsy in that cerebral palsy was a static and non-progressive disease that has its onset at child birth or early childhood (one to two years old). Friedreich Ataxia conversely is a degenerative disease that worsens over time that has an onset in adolescence or early adulthood. Dr. DeAntonio also believed that Friedreich’s Ataxia could cause the cognitive limitations shown in the tests performed by Dr. Fischer during Claimant’s psychological evaluation. Although Dr. DeAntonio did not evaluate or meet with Claimant, he concluded that Claimant’s Friedreich’s Ataxia was not a qualifying developmental disability because Claimant’s diagnosis did not occur until he was over 30 years old, well beyond the 18 years of age required for a developmental disability.

10. There is insufficient evidence to conclude that Claimant suffers from a developmental disability that would qualify him for regional center services. Claimant has Friedreich’s Ataxia, which although a debilitating disease, is not a developmental disability that would qualify him for regional center services. By Claimant’s own admission, his symptoms from this disease did not manifest itself until he was over 30 years old. Claimant does not have cerebral palsy or epilepsy, and there are no medical or school records that would support a conclusion that Claimant had any other developmental disability prior to reaching 18 years of age.

LEGAL CONCLUSIONS

1. Claimant has not established that he suffers from a developmental disability entitling him to regional center services. (Factual Findings 1 through 10.)

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 4512² defines “developmental disability” as:

² All further references are to the Welfare and Institutions Code unless otherwise indicated.

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 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 Friedrich's Ataxia, a disease which had its onset when Claimant was over 30 years old.

ORDER

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

DATED: January 25, 2013



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.