

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.A.

Claimant,

OAH Case No. 2012110788

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Respondent.

DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on January 10, 2013, in Los Angeles, California.

Olga A. represented her daughter, J.A.¹ (Claimant).

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (SCLARC or Service Agency or regional center).

The matter was submitted for decision on January 10, 2013.

ISSUE

The question to be decided in this matter is whether Claimant is eligible for regional center services.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1 through 7.
Testimonial: Beatrix Wagner; Sandra Watson; Michael Gosano; Claimant's mother; Eva Tapia.

¹ Initials have been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a six-year-old girl who is requesting regional center services.

2. On February 17, 2012, the Service Agency served Claimant with a Notice of Action, which found that Claimant is not eligible for regional center services. The stated reason for the decision was that Claimant did not meet the definition of a developmental disorder as defined by Welfare and Institutions Code Sections 4512 and 4644. Claimant timely filed a fair hearing request.

3. Beatrix Wagner (Wagner) testified at the hearing. Wagner is a licensed psychologist and a consultant for SCLARC. Wagner made behavioral observations and evaluated Claimant on December 5, 2011, for the purpose of determining regional center eligibility. Wagner administered the following tests: Weschler Nonverbal Scale of Ability; Autism Diagnostic Interview Scale-Revised; Vineland Adaptive Behavioral Scales-II. Claimant had significantly limited verbal skills. Wagner diagnosed Claimant with borderline intellectual functioning and expressive language disorder, and recommended that Claimant receive speech therapy, appropriate academic placement, and a re-assessment in two years.

4. Claimant was previously assessed by licensed psychologist Lisa Doi (Doi), Ph.D., on August 31, 2009. Dr. Doi performed a psychological evaluation and found that Claimant's

verbal skills were assessed to be in the mild deficit range, with performance abilities measured to be in the low-average range. Claimant was heard to say less than five recognizable words during the course of this evaluation. On a measure of adaptive behavior, she demonstrated functioning in the borderline range in communication skills, daily living skills, and socialization abilities, with motor skills in the adequate range, all based on parent report. It is recommended that [Claimant] receive another psychological evaluation within the next 24 months to clarify her level of cognitive functioning in order to determine whether her non-verbal cognitive ability is actually more in the borderline than in the low-average range. Claimant does not appear to demonstrate symptoms or characteristics which would suggest the presence of a pervasive developmental disorder.

5. Sandra Watson (Watson) testified at the hearing. Watson is a licensed psychologist and the SCLARC Chief of Clinical Services. Watson is part of the core staff team which reviewed and considered the following assessments of Claimant: a psychological assessment by Dr. Wagner dated December 5, 2011; a psychological assessment by Dr. Doi, dated August 31, 2009; a social assessment by Michael Gosano dated October 11, 2011; and a multidisciplinary assessment by the Santa Ana Unified School District dated December 18, 2009. Based on the information presented at that time, the core staff team determined that Claimant was not eligible for regional center services; however, Watson indicated that the team would be willing to review and reconsider any new information regarding Claimant.

6. Michael Gosano (Gosano), SCLARC Intake Service Coordinator, testified at the hearing. Gosano interviewed Claimant and her mother. During the interview, Claimant required constant prompting by her mother in order to properly behave and respond to the interview questions. Gosano opined that Claimant struggled with her speech, had difficulty staying on task, and did not like being prompted. She threw mini-tantrums which were quickly redirected by Claimant's mother. Claimant was willful and did not like following instruction. Gosano determined that although Claimant needs help, she is not developmentally disabled such that she would qualify for regional center services. Gosano agreed with Dr. Wagner's recommendation that Claimant receive speech therapy, appropriate academic placement, and a re-assessment in two years. Gosano had high praise for Claimant's mother's parenting skills.

7. Eva Tapia (Tapia) works for Quality Life Services, and assists Claimant's mother in money management, and guiding her through issues with parenting skills. Tapia opined that Claimant is a good mother. Claimant's mother receives 60 hours per month of services from this organization. Tapia does not regularly work with Claimant's family, and has met Claimant three times. She observed that Claimant is very shy and did not talk too much, but she thought this was normal because Tapia was a stranger to her. Tapia explained that the Department of Children and Family Services became involved in Claimant's case because Claimant's mother's boyfriend had been abusive to Claimant's mother. Claimant's attorney encouraged Claimant's mother to pursue this appeal on Claimant's behalf.

8. Claimant's mother testified at the hearing. Claimant is a kindergarten student at Parmelee Avenue Elementary School in Los Angeles. She explained that Claimant has significant maladaptive behaviors both at home and at school. For example, Claimant's teacher has complained that Claimant will stand up in the middle of a lesson and run around the classroom. At home, Claimant will "act like a baby" and throw tantrums. Claimant's teacher has also indicated that she has difficulty paying attention, and thus Claimant's mother is planning to have Claimant assessed for Attention Deficit Hyperactivity Disorder. She is willing to provide the results of this and other assessments to the regional center for further consideration. Claimant's mother also clarified some discrepancies in Dr. Wagner's report and Gosano's report, such as the fact that there is no family history of diabetes and hypertension, and that the police only came to her home on one occasion.

9. SCLARC agreed that Claimant should be reassessed, and would like the opportunity to consider any other assessments that Claimant has undergone, whether at school or through her pediatrician or other care providers. Claimant's mother indicated that Claimant's school plans to hold an Individualized Education Plan (IEP) meeting in the near future. She is willing to allow SCLARC to attend, and to review the findings that result from the IEP meeting.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's request for regional center services, as set forth in Factual Findings 1 through 9, and Legal Conclusions 2 through 7.

2. Claimant bears the burden of proving, by a preponderance of evidence, that he is eligible for government benefits or services. (*See* Evid. Code § 115; *see also Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162.)

3. The Lanterman Developmental Disabilities Services Act ("Lanterman Act") governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, Claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for [him]." (Welf. & Inst. Code § 4512, subd. (a).)

4. "Developmental disability" is defined to include 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 individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."(*Id.*)

5. "Substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person" in the following categories: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (Welf. & Inst. Code § 4512, subd. (1).)

6. Recent case law has expanded the scope of eligibility under the fifth category of developmental disability. Specifically, an individual may qualify if there is an established need for treatment similar to that proscribed for an individual with mental retardation. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.) *Samantha C.* recognized the Association of Regional Center Agencies' (ARCA) proposed guidelines to assist regional centers in determining "fifth category" eligibility. The guidelines state, in part, that "[a]n individual can be considered to be functioning in a manner similar to a person with mental retardation if the[ir] general intellectual functioning is in the low borderline range of intelligence." In addition, "the person must also demonstrate significant deficits in adaptive skills" (which are defined above in legal conclusion number 5). The guidelines caution finding eligibility in the fifth category for young children because borderline intellectual functioning needs to show stability over time, and young children may not demonstrate consistent rates and patterns of development.

7. Given the foregoing, Claimant did not prove, by a preponderance of the evidence, that she has a developmental disability, despite having significant issues. The evidence available at the time of hearing did not support a finding of a developmental disability. In addition, there was minimal, if any, direct evidence that Claimant would benefit from treatment similar to that provided for individuals with mental retardation.

ORDER

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

Dated: January 22, 2013



AMY C. YERKEY
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.