

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

F.O.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2012120514

DECISION

This matter came on for regularly scheduled hearing on February 6, 2013, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. The South Central Los Angeles Regional Center (Service Agency or SCLARC) was represented by Johanna Arias-Bhatia, Fair Hearings/Government Affairs Manager. Claimant F.O. was represented by his mother, Rosa O.¹

Evidence was received by documents and testimony. The record was closed and the matter was submitted for decision on February 6, 2013.

ISSUE

The parties agreed that the following issue is to be resolved:

Is Claimant eligible to receive services from the Service Agency?

¹ Initials are used to maintain privacy for Claimant and his family.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant was born in September 2009 and is three years old. He received Early Start services from SCLARC, including an in-home infant development service, family training for behavioral interventions, and a speech and language assessment. Early Start services end at age three, and SCLARC determined that he was not eligible for further services under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4400 et seq.; referred to as the Lanterman Act).² In July 2012, Claimant was assessed by a school psychologist for the Los Angeles Unified School District (School District), who recommended that he be found eligible for special education services under the category of autistic-like behavior. The School District followed that recommendation and found Claimant to be eligible. Claimant's mother requested that Claimant be re-assessed for eligibility for SCLARC services. He claims to be eligible because he suffers from autism.

2. In a letter dated October 24, 2012 (Exhibit 1), the Service Agency notified Claimant that he was not eligible for services.

3. Claimant's mother submitted a Request for Fair Hearing dated December 10, 2012, resulting in this hearing.

4(a). Various statutes and regulations relating to eligibility apply to Claimant's request for services. Although there are five developmental disabilities that would make someone eligible for services, this Decision will examine only autism as the eligible condition. As applicable to this case, section 4512, subdivision (a), states: " 'Developmental disability' means 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. . . . [T]his term shall include . . . autism, . . . but shall not include other handicapping conditions that are solely physical in nature."

4(b). As relevant here, California Code of Regulations (CCR), title 17, section 54000, defines "developmental disability" as a disability attributable to autism that originates before age 18, is likely to continue indefinitely, and constitutes a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or disabilities that are solely physical in nature.

5. In summary, Claimant's mother contends that Claimant suffers from autism and is eligible for services. The Service Agency contends that Claimant may suffer other conditions, including Expressive Language Disorder and Disruptive Behavior Disorder Not Otherwise Specified, but does not have a diagnosis of autism and is not eligible for services.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

6(a). A base level understanding of autism will help place in context the evidence of Claimant's behaviors, test scores, evaluations and diagnoses.

6(b). The Diagnostic and Statistical Manual of Mental Disorders (4th edition, Text Revision, 2000, American Psychiatric Association; also known as DSM-IV-TR) is a well respected and generally accepted manual listing the diagnostic criteria and discussing the identifying factors of most known mental disorders.

7. According to the DSM-IV-TR, the features of Autistic Disorder³ are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. It can differ greatly from person to person. There is no definitive test for it; rather, the list of symptoms and behaviors is an attempt to collect and categorize the known features into a workable diagnostic reference tool. To support a diagnosis of autism requires a review of 12 different symptoms or behaviors and a conclusion that at least six are present; however, the six or more symptoms or behaviors must include the following:

(a) at least two of the four behaviors referred to as qualitative impairments in social interaction, which must be gross and sustained;

(b) at least one of the four behaviors referred to as qualitative impairments in communication, which must be marked and sustained and affect both verbal and nonverbal skills; and

(c) at least one of the four behaviors referred to as restricted, repetitive and stereotyped patterns of behavior, interests, and activities.

8. As Claimant approached his third birthday, it was necessary for SCLARC to determine if he would be eligible for services under the Lanterman Act after he reached age three. At SCLARC's request, Claimant was evaluated by Ann Walker, Ph.D., on July 2, 2012. Claimant was age two years, ten months. In her report (Exhibit 6), Dr. Walker set forth background information and history, her observations of Claimant and the results of the tests she administered. Dr. Walker's diagnosis was Disruptive Behavior Disorder Not Otherwise Specified. She also determined that there was sufficient information to suspect that Claimant suffered from Mixed Expressive Receptive Language Disorder, but she felt that a more specific assessment should be performed by a qualified speech therapist. More specific assessments had been performed and included diagnosis of, and treatment for, Mixed Expressive Receptive Language Disorder (Exhibits 15 and B). However, Dr. Walker was not aware of these reports.

³ The statute listing eligible conditions uses the word autism (see Factual Finding 4), while the DSM-IV-TR uses the phrase Autistic Disorder. For purposes of this Decision, they are interchangeable.

9. Dr. Walker specifically assessed Claimant for autism by using two tests that are accepted as the “gold standard”: the Autism Diagnostic Observational Schedule – Module 1 (ADOS), and the Autism Diagnostic Interview-Revised (ADI-R). In administering the ADOS, Dr. Walker interacted with Claimant using objects and scenarios. For the ADI-R, Dr. Walker interviewed Claimant’s mother and his aunt, who both live with Claimant. In both tests, the scores were below the cut off that would indicate the presence of either autism or an autistic spectrum disorder (which includes disorders such as Asperger’s Disorder or Pervasive Developmental Disorder Not Otherwise Specified).

10. Dr. Walker performed a second assessment of Claimant on August 9, 2012. As she explained in her testimony, because young children can have variable behavior at times (good days and bad days), she finds it helpful to do a second assessment. She again administered the ADOS and ADI-R. Again, Claimant’s scores were below the cut off that would indicate the presence of either autism or an autistic spectrum disorder. Dr. Walker also explained her understanding of the nature of the School District’s testing and requirements to be eligible for special education services. By comparison, more symptoms and behaviors are required to make a diagnosis of Autistic Disorder under the DSM-IV-TR, which is the type of diagnosis required by the Service Agency to find eligibility for Lanterman Act services.

11. Claimant’s mother expressed concern that Dr. Walker had not performed an adequate assessment of Claimant. SCLARC arranged for a psychological evaluation by Victor Sanchez, Ph.D., on September 28, 2012, when Claimant was age three. Dr. Sanchez’s report (Exhibit 4), includes information gathered from prior reports, interviews with Claimant’s mother, clinical observation and administration of tests. Among other tests, Dr. Sanchez administered the ADI-R and the Gilliam Autism Rating Scale II. Dr. Sanchez made a diagnosis of Expressive Language Disorder, and noted “elements of Oppositional/Defiant Disorder/Possible Attention Deficit Disorder/Possible Disruptive Disorder [clinical picture may not yet be fully developed].” (Exhibit 4, p. 5.)

12. Claimant was evaluated by his School District. A Preschool Assessment Report was prepared by LaShonn Bowell, school psychologist, of an assessment on July 13, 2012 (Exhibit 13). The report includes a short history and reference to prior testing, and the results of tests administered by Ms. Bowell, including the Childhood Autism Rating Scales. The report refers to a list of seven factors to be evaluated to determine if a child is eligible for special education services for autistic-like behaviors. Of the seven listed items, Claimant was assessed as exhibiting three: (1) an inability to use verbal and nonverbal language for appropriate communication and social interactions; (2) a history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood; and (3) an obsession to maintain sameness such as resistance to environmental change or change in daily routines.

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13(a). The criteria related to eligibility for special education services from a school district under the category of autistic-like behaviors are found in the Education Code and related regulations. Under California Code of Regulations, title 5, section 3030, subdivision (g), eligibility for special education services exists if a pupil exhibits “*any combination* of the following autistic-like behaviors:” (*Emphasis added.*)

“1. An inability to use oral language for appropriate communication.

“2. A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.

“3. An obsession to maintain sameness.

“4. Extreme preoccupation with objects or inappropriate use of objects or both.

“5. Extreme resistance to controls.

“6. Displays peculiar motoric mannerisms and motility patterns.

“7. Self-stimulating, ritualistic behavior.”

13(b). This regulation contains substantially fewer requirements to be satisfied (i.e., any two or more of the seven listed) for someone to receive special education services for exhibiting autistic-like behaviors as compared to the number of requirements under the DSM-IV-TR to be diagnosed as autistic (i.e., six of the 12 listed) and receive services from the Service Agency.

14. The School District developed an Individualized Education Program (IEP) for Claimant on July 24, 2012 (Exhibit A), which indicated that he was eligible for special education services based on autism. Exhibit A also includes notes of Claimant’s progress, as of January 22, 2013, in the Head Start program he began attending in September 2012.

15. Claimant’s mother testified about many of the behaviors, characteristics and challenges presented by Claimant. Among other behaviors, she is particularly concerned about his tantrums, and that his tantrums and language difficulties result in the other children in his preschool program being less inclined to play or otherwise interact with him. She would also like to have Claimant evaluated again for regional center services. However, there was no evidence that the assessments performed by Dr. Walker and Dr. Sanchez were inadequate, and the School District’s determination of eligibility does not cast doubt on the conclusions reached by Dr. Walker and Dr. Sanchez.

16. The preponderance of the evidence supports the Service Agency’s decision to deny eligibility for Claimant to receive services. Claimant has not established that he is eligible to receive services or that a further assessment is required.

CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law and determination of the issue:

1. Throughout the applicable statutes and regulations (sections 4700 - 4716, and CCR, title 17, sections 50900 - 50964), the state level fair hearing is referred to as an appeal of the regional center's decision. Particularly in this instance, where Claimant seeks to establish his eligibility for services, the burden is on Claimant to demonstrate that the Service Agency's decision is incorrect.

2. To answer the question of Claimant's eligibility requires a review of the applicable statutes and regulations, and the relationship of the evidence to them.

3. Section 4512 lists specific categories for possible eligibility, including autism. The statute also requires that the condition must constitute a substantial disability to that individual.

4. The first report to indicate the presence of behaviors significantly related to autism is the School District Preschool Assessment Report. However, the conclusions of this report are entitled to limited weight, for the following reasons. The requirements to qualify for special education services are substantially fewer than those required for eligibility under the Lanterman act. Ms. Bowell did not make a diagnosis of autism; rather, she found the presence of autistic-like behaviors sufficient to be eligible for special education services. The assessment performed by Ms. Bowell was not performed using the criteria of the DSM-IV-TR. See Factual Findings 1, 12, 13 and 14.

5. The language used in the DSM-IV-TR section on autistic disorders requires some of the factors listed to be "gross and sustained," meaning that it is obvious and noticeable over time. The behavior must be of clinical importance. The DSM-IV-TR specifically states that some behaviors must be a "qualitative impairment" or a "marked impairment." Therefore, behaviors must be evaluated by those who, by their training and experience, are qualified to determine whether those behaviors are clinically significant and would or would not support the diagnosis.

6. The reports of Dr. Walker and Dr. Sanchez are comprehensive and utilize tests that are well accepted by professionals in the field. Neither Dr. Walker nor Dr. Sanchez found that Claimant met the diagnostic criteria for Autistic Disorder. The other diagnoses that they made are well supported by the testing. These other diagnoses do not constitute developmental disabilities that would make Claimant eligible for SCLARC services under the Lanterman Act. See Factual Findings 1, 2, and 8 through 14.

7. The preponderance of the evidence supports the Service Agency's decision to deny eligibility for Claimant to receive services. The Service Agency's interpretation of the laws and regulations regarding eligibility, and application of them to Claimant, was not proven to be unreasonable or arbitrary.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant has not established that he is eligible for services. Claimant's appeal of the Service Agency's determination that he is not eligible for services from the Service Agency is denied.

DATED: February 7, 2013.



DAVID B. ROSENMAN
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.