

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2013030391

DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 27, 2013, in Los Angeles, California.

Claimant was represented by his brother.¹ Claimant and his mother were present.

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented the South Central Los Angeles Regional Center (Service Agency).

The parties submitted the matter for decision on June 27, 2013.

STATEMENT OF THE CASE

Claimant appeals the Service Agency's denial of eligibility for regional center services.

Claimant contends he has mental retardation or a condition closely related to mental retardation. The Service Agency contends he has no eligible condition.

¹ Party title is used to refer to Claimant and family title is used to refer to Claimant's representative and mother to preserve Claimant's privacy.

FACTUAL FINDINGS

1. Claimant, a 37-year-old man, applied to the Service Agency for eligibility. The Service Agency reviewed his case on February 5, 2013, and on February 7, 2013, it denied Claimant's application. The Service Agency informed Claimant that he did not meet the definition of developmental disability, although he had a diagnosis of mild mental retardation, and he did not meet any other statutory definition of developmental disability, because there was insufficient evidence that his mental retardation began before the age of 18. In its letter of denial to Claimant, the Service Agency wrote, "Although you have been diagnosed with Mild Mental Retardation[,] there is no information prior to the age of 18."

2. Claimant appealed the Service Agency's denial on March 1, 2013.

3. The Service Agency referred Claimant to Rebecca R. Holtzman, Psy.D., a clinical psychologist. Holtzman evaluated Claimant on December 3, 2012. She testified at the instant hearing. She administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) and the Vineland Adaptive Behavior Scales, Second Edition (Vineland), among other tests. Holtzman interviewed Claimant and his brother, reviewed records, and made clinical observations.

4. On the WAIS-IV, Claimant scored a 70 in verbal comprehension, a 63 in perceptual reasoning, a 63 in working memory, and a 79 in processing speed. Claimant's full-scale IQ score was 63, a score Holtzman defined as in the "extremely low range." Holtzman noted that Claimant's vocabulary subtest scores showed that Claimant possessed "extremely low abilities in his understanding of the meaning of words."

5. Holtzman found that Claimant spoke using complete sentences but had some "articulation difficulties," stuttered, and was "sometimes difficult to understand."

6. Holtzman "partially administered" the Wide Range Achievement Test (WRAT-4) to obtain data on his academic functioning. On the WRAT-4, Claimant scored in the "extremely low range" in reading and spelling.

7. On the Vineland, Claimant's overall adaptive skills fell in the "low (mild) range."

8. Using the criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), Holtzman diagnosed Claimant with mild mental retardation. She reasoned as follows: Claimant "performed in the overall extremely [low] range in cognitive intellectual abilities and in the overall low (mild) range for adaptive functioning. . . . The . . . diagnosis of mental retardation requires significantly sub-average intellectual functioning with concurrent deficits in adaptive functioning. Thus, the diagnosis of Mental Retardation is given." Holtzman also diagnosed Claimant with mood disorder, not otherwise specified (rule out).

9. According to the DSM-IV-TR, “[t]he essential feature of Mental Retardation is significantly subaverage general intellectual functioning . . . that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety The onset must occur before age 18 years General intellectual functioning is defined by the intelligence quotient (IQ or IQ-equivalent) obtained by assessment Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below It should be noted that there is a measurement error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument Thus it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior.”

10. At hearing, Holtzman conceded that, in accordance with the DSM-IV-TR, a diagnosis of mental retardation requires the onset of the condition to occur before age 18. She explained that she used her professional discretion to diagnose Claimant as she did, and stood by her diagnostic impressions. Based on Holtzman’s diagnosis and the additional evidence set forth, *post*, Claimant has mental retardation, and had the condition before the age of 18.

11. Although the Service Agency’s denial letter set forth only one reason to deny eligibility, that is, insufficient evidence of onset prior to age 18, at hearing, the Service Agency argued and presented evidence that it also believed Claimant’s mental health condition was the cause of his cognitive and adaptive deficits, not mental retardation. Although the Service Agency is limited to the reason set forth in its denial letter (no evidence of onset prior to age 18), Claimant’s brother was nevertheless prepared to address both issues and did so at hearing. Consequently, the ALJ considered the issues of onset prior to age 18 and the source of Claimant’s deficits.

12. Claimant had one psychiatric hospitalization due to suicidal ideation. At his social assessment interview with the Service Agency in November 2012 (an interview he attended alone), Claimant described the events that led to his hospitalization. In June 2012, Claimant argued with his mother about the use of a fan in the family home. Claimant pushed his mother and Claimant’s brother called the police. Claimant became upset and broke his brother’s car window. Claimant spoke aloud of his desire to cut his veins. He did not to cut himself, but the police took him to the Los Angeles Metropolitan Medical Center (LAMMC), in Los Angeles. He was held for three days.

13. On its “Multidisciplinary Nursing Assessment,” dated June 30, 2012, LAMMC described Claimant’s independence, intellectual ability, insight and judgment, and self-care skills as “fair.” However, three days later, in its “Multidisciplinary Master Treatment Plan,” dated July 3, 2012, LAMMC noted no cognitive impairment, but described Claimant’s social skills, ability for independence, stability and support, insight and judgment, verbal skills and communication, and recreational capability, as “impaired.” LAMMC deferred diagnoses on axis II at the time of his discharge on July 3, 2012.

14. Michelle Cuevas, Ph.D., a staff clinical psychologist for the Service Agency, reviewed Claimant's records. She testified at the instant hearing. She opined that Claimant's deficits likely emanate from his mental health condition and that Claimant's deficits prior to the age of 18 were the result of his mood disorder and not mental retardation. She asserted that his school records show that, at some point in his schooling, Claimant tested as having close-to-normal intelligence and that his cognitive and learning skills began to decline as his mental health condition worsened.

15. The evidence did not support Cuevas' opinions. There was no evidence that Claimant ever tested in the average range of intelligence. Cuevas did not evaluate Claimant and provided no evidence, other than her general opinion, to support her position that Claimant's mood disorder would better account for his cognitive and adaptive deficits than his diagnosis of mental retardation. Her opinion on this point, given Claimant's diagnosis and her failure to contest that diagnosis, appeared nonsensical.

16. Claimant has received special education services throughout his education, as a student with learning disabilities.

17. In a school medical evaluation for special education services, dated February 1981, when Claimant was five years old, Claimant was described as having poor pronunciation, and being unable to follow simple instructions. The school district concluded at that time that Claimant had delayed development in speech and behavior, learning difficulties, and a poor attention span. The school district recommended, among other things, that Claimant be placed in a small class with an individualized program.

18. In a language disorder assessment report by the school district in May 1986, when Claimant was ten years old, the school district found Claimant's oral vocabulary at an 8-year, 3-month-old level, his understanding of grammar at a 7-year, 3-month-old level, and his language quotient at a 7-year, 5-month-old level. This same report noted that Claimant was reading at a first grade level, and spelling and performing mathematics at a third grade level.

19. Through Cuevas, the Service Agency highlighted the fact that the school district found a discrepancy between Claimant's cognitive ability and his academic achievement. The Service Agency argued that Claimant appeared to have average cognitive ability, as stated in a 1990 special education individualized education plan (IEP). That IEP indeed stated that Claimant appeared to have average cognitive ability and that he achieved below what the school district believed he should. However, there was no evidence to support the school district's assertion that Claimant had average or even near-average cognitive ability. Further, there was no evidence within the school records quantifying Claimant's cognitive ability in any way that would allow one to assess the school district's statements on this point.

20. Claimant's June 1990 IEP contained his scores on the Woodcock-Johnson Tests of Achievement, administered by the school district in May 1990. At that time,

Claimant was 14 years old. Claimant scored the following grade equivalencies: letter-word identification (2nd grade), passage comprehension (2nd grade), word attack (1st grade), reading vocabulary (1st grade), calculation (4th grade), applied problems (4th grade), quantitative concepts (third grade), dictation (2nd grade), writing samples (2nd grade), writing fluency (2nd grade), punctuation/capitalization (2nd grade), spelling (2nd grade), usage (2nd grade), science (2nd grade), social studies (7th grade), and humanities (1st grade).

21. Claimant's IEP, dated June 1990, when Claimant was 14 years old, notes that before 1990, Claimant was a "cooperative, hard working, pleasant student," but that beginning sometime around 1990, Claimant became a disobedient and rebellious student. Claimant's brother persuasively explained how, due to his expressive language difficulties, his adolescence, and his lack of friendships (discussed in Factual Finding 29), Claimant became extremely frustrated, he would have anger outbursts, and he would act disobediently. These factors reasonably explained Claimant's change in attitude in school. It is also likely that his mental health condition played a role in his change in academic attitude, but there was no reason to deny that Claimant's cognitive delays, due to mental retardation, negatively affected Claimant's academic performance.

22. Claimant received his high school diploma from the Abraham Friedman Occupational Center in 1996. He attended the East Los Angeles Occupational Center but he could not complete an electronics program because he found the examinations extremely difficult.

23. Claimant has an unsuccessful work history. According to the Service Agency's social assessment, Claimant worked part-time as a courtesy clerk at a supermarket chain in 2004 for four years, but was terminated. He worked as a student aide at the East Los Angeles Occupational Center from May 2006 to June 2008, but was laid off. He then worked as a custodian, also at the East Los Angeles Occupational Center, in 2008, but was laid off. This history was obtained by the Service Agency directly from Claimant during his social assessment interview. There was no documentary or other evidence establishing whether this information was correct, how Claimant obtained these jobs, no evidence of his job duties, and no evidence of his work performance.

24. In January 2012, Claimant began working at a fast food chain, working only two hours per week. At some point during his employment, Claimant injured his back on the job and he has been unable to work ever since. Claimant's brother explained at hearing that the fast food restaurant manager offered Claimant a job as a personal favor to Claimant's neighbor and Claimant's family. Claimant's brother noted that the position was not substantive, as evident by the two-hour per week job schedule. There was no evidence of Claimant's job duties or his work performance.

25. Cuevas opined that Claimant's mental retardation was not so severe as to impede his ability to work successfully since he was able to obtain and hold a job at a fast food restaurant. As the job was for only two hours per week and Cuevas had no information

regarding Claimant's job duties, how he obtained the job, or his work performance, Cuevas' opinion was unpersuasive.

26. Claimant received vocational rehabilitation services from the Department of Rehabilitation in 2002 and 2003. In Claimant's individualized plan for employment, dated May 2002, when Claimant was 26 years old, the Department of Rehabilitation identified Claimant as having 3rd grade reading skills, and 2nd grade spelling and math skills.

27. Claimant lives with his mother and father.

28. At his social assessment interview with the Service Agency, Claimant described his own daily living skills as follows. He can shower, but he has to be reminded to shower at times. He can take the bus, but if he gets lost, he must ask the bus driver to be redirected. Claimant's mother handles all of his money and only gives him money when needed. He can buy his own clothes; he knows how to count money. Claimant's mother cooks for him and washes his clothes. He does not know how to do laundry. He can clean his house but he does so only when he is asked. He can warm tortillas, make sandwiches, and warm food in a microwave oven.

29. Claimant's brother explained that Claimant has always had difficulties. He described Claimant's abilities similar to those abilities noted in Factual Finding 28. Claimant has long been frustrated due to his expressive language difficulties, his cognitive delay, and the fact that he has never had any friends, or girlfriends.

30. Claimant does not understand many words, and cannot express himself fully. His special education established that he has significant learning problems. If left alone, Claimant would not be able to care for himself, direct his life, live independently, or obtain and maintain employment.

31. The totality of the evidence established that Claimant has and had, prior to the age of 18, mental retardation and significant functional limitations in receptive and expressive language, learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency.

32. During the instant hearing, Claimant played with a small, plastic toy airplane.

LEGAL CONCLUSIONS

1. Claimant bore the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 115 & 500.)

2. Welfare and Institutions Code section 4512, subdivision (a) states:

“Developmental disability” means 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.

3. Welfare and Institutions Code section 4512, subdivision (l) states:

“Substantial disability” means 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:

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

(See also Cal. Code Regs., tit. 17, § 54001.)

4. The evidence established that Claimant has mild mental retardation and that the condition’s onset occurred prior to the age of 18. The evidence further established that, due to mental retardation, Claimant has significant functional limitations in receptive and expressive language, learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency. While Claimant also has a mental health condition, the evidence did not support the conclusion that his cognitive and adaptive deficits are resultant of that condition.

5. Cause exists to grant Claimant’s appeal, as set forth in Factual Findings 1-32, and Legal Conclusions 2-4.

ORDER

Claimant's appeal, in OAH case number 2013030391, is granted. Claimant is eligible for services from the Service Agency as a person with mental retardation, a developmental disability.

Dated: July 9, 2013



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.