

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ASHTON F.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2013070977

DECISION

This matter came on for regularly scheduled hearing on February 3, 2014, in Los Angeles, California, before Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California. The South Central Los Angeles Regional Center (Service Agency) was represented by Johanna Arias-Bhatia, Fair Hearings Coordinator. Claimant Ashton F. was represented by his mother, Ashley J.¹

Evidence was received by documents and testimony. The record was left open until February 27, 2014 to allow Claimant to submit additional documents and for the Service Agency to submit a written response thereto. The results of a recent MRI were marked as Exhibits C and D for identification and admitted into evidence. Claimant also submitted a hand-written statement, with an unintelligible signature, regarding Claimant's ability to walk and eat, which was marked as Exhibit E and admitted into evidence as administrative hearsay.² The Service Agency submitted a response from Medical Consultant Anthony L. Mendoza, M.D., which was marked as Exhibit 10 for identification and admitted into evidence. The record was closed and the matter was submitted for decision on February 27, 2014.

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

² The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

ISSUE

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

Is Claimant eligible to receive services from the Service Agency?

FACTUAL FINDINGS

1. Claimant, who has a diagnosis of cerebral palsy, was born in December 2008 and is five years old. The pregnancy, birth and neonatal course appeared to be uncomplicated. His developmental milestones were typical and Claimant began to walk independently at 14 months of age. He was first diagnosed with left spastic hemiplegic cerebral palsy³ at age two when his parents sought an orthopedic consultation because they observed that he fell frequently and dragged his left foot. Claimant received serial heel cord stretching castings for his left foot until 2012. Claimant is an active boy who attends pre-kindergarten classes through Head Start, where he is working at grade-level. His activities are age-appropriate for all activities of daily living, as is his speech, cognition and comprehension. He currently has normal upper and lower extremity strength, but exhibits mild left-sided spasticity and hypertonia⁴ of his left arm and leg, with hyperreflexia⁵ and a shortened left heel cord. He is able to walk and run independently, but he has a decreased left upper extremity arm swing and holds his left arm in a flexed position. Claimant has a left hemiparetic gait⁶ and exhibits left foot intorsion⁷ while running.

2. Claimant was evaluated for eligibility under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welfare and Institutions Code section 4500 et seq.) A review of his medical records and a medical evaluation of Claimant were conducted by Dr. Mendoza on September 17, 2012. Dr. Mendoza, who testified credibly at the hearing, noted that Claimant has good balance, but poor movement coordination. He observed that Claimant could not descend a staircase with alternating feet. Claimant walks independently, with a slightly abnormal gait, and his speech is clear and easily understood. Dr. Mendoza concluded that Claimant's Cerebral Palsy is mild and not substantially handicapping.

3. In a letter dated January 8, 2013, the Service Agency denied eligibility, asserting that Claimant's diagnosis of cerebral palsy did not render him eligible for services because it was not "substantially handicapping." Claimant's mother subsequently submitted additional medical

³ Movement on one side of the body is affected.

⁴ Uncontrollable muscle spasms, stiffening or straightening out of muscles, shock-like contractions of all or part of a group of muscles, and abnormal muscle tone.

⁵ Overactive or overresponsive reflexes, such as twitching.

⁶ Swinging the affected leg outward and ahead in a circle or pushing the leg ahead, while the affected upper limb is carried across the trunk for balance.

⁷ Inward rotation.

information, but the Service Agency confirmed its denial of eligibility by letter dated May 23, 2013.

4. Claimant's mother submitted a request for Fair Hearing dated July 6, 2013, and this hearing ensued.

5. Various statutes and regulations relating to eligibility may apply to Claimant's request for services. As applicable to this case, Welfare and Institutions Code⁸ 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 mental retardation, cerebral palsy, epilepsy and 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."

As relevant here, California Code of Regulations, title 17 (CCR), section 54000 defines "developmental disability" as a disability attributable to one of the five eligible conditions 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 solely physical in nature.

6. This statute and regulation include the requirement that the condition constitutes a substantial disability or substantial handicap. In Code section 4512, subdivision (l), "substantial disability" is defined to mean "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by the regional center, 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."

The definition of substantial disability found in CCR section 54001 adds that it is 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." In CCR section 54002, the term "cognitive" is defined as "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience."

⁸ All statutory references are to the Welfare and Institutions Code.

7. Claimant's mother testified credibly and was respectful of the proceedings. She contends that Claimant is eligible for services because he suffers from cerebral palsy which is substantially disabling. Claimant easily loses his balance, falls "a lot" and cannot walk the three blocks to school because he complains that "his legs get tired." As a result, his mother still pushes him in a stroller. His mother testified that his speech is "okay" and others are able to understand him, but she asserts that his "jibber-jabber" speech "could be clearer" and that he "mumbles." Claimant has been diagnosed with Attention Deficit Hyperactivity Disorder and his mother says "he can't sit still and focus on one thing." Claimant currently gets physical therapy once a month from California Children's Services (CCS.) His mother requested an Individualized Education Plan (IEP) when she registered Claimant for school in Spring 2012, but the school has not yet acted on her request.⁹

8. On January 8, 2013, Claimant's case was reviewed by the Service Agency's interdisciplinary core staffing team which considered a psychological assessment completed in September 2012, a medical evaluation conducted in September 2012 by Dr. Mendoza, a psychosocial assessment completed in August 2012, and medical records received in July 2012. The interdisciplinary core staffing team also considered medical records subsequently provided by Claimant's mother, dated April 2013. Following this review, the Service Agency concurred with Claimant's cerebral palsy diagnosis, but concluded that because he is not substantially disabled by this medical condition, he is not eligible for services.

9. In its denial letter dated May 23, 2013, the Service Agency included a recommendation that Claimant's mother seek behavioral therapy for Claimant, request adaptive physical education and a speech and occupational therapy evaluation from the school district, and seek physical and occupational therapy from CCS. Since the Service Agency is a secondary provider, even if he had been deemed eligible for Regional Center services, Claimant would be expected to obtain these services from a generic resource, such as the school district or CCS, rather than from the Service Agency.

LEGAL CONCLUSIONS

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

1. Throughout the applicable statutes and regulations (Code sections 4700 - 4716, and CCR sections 50900 - 50964), the state level fair hearing is referred to as an appeal of the regional center's decision. Where 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.

2 To answer the question of Claimant's eligibility requires a review of the

⁹ At the hearing, the Service Agency suggested that Claimant's mother renew her demand for an IEP from the school district, which is required to act on such a request within sixty days.

applicable statutes and regulations and the relationship of the evidence to them. Several requirements must be met. Code section 4512 lists specific categories for possible eligibility, as well as the requirement that the disability constitute a substantial disability for the individual, which is then defined. Similar requirements are found in the CCR. (Factual Findings 5 and 6.)

3. There have been numerous tests, evaluations, assessments, observations and reports relating to Claimant. It has been established that Claimant has cerebral palsy. However, no appropriately trained and experienced professional has offered the opinion that Claimant is substantially disabled as a result of cerebral palsy. There was no evidence that these assessments were performed improperly or that the conclusions reached by the professionals who determined that he is not substantially disabled were incorrect.

4. In her testimony and in her questioning of Dr. Mendoza, Claimant's mother referred to reports and assessments that included references to Claimant's cerebral palsy. However, sufficient evidence was not presented which would establish that Claimant has significant functional limitations in three or more areas of major life activities. Therefore, the Claimant cannot be deemed to be substantially disabled as a result of cerebral palsy.

5. As set out in Factual Findings 1 through 8, Claimant has not established by a preponderance of the evidence that he is eligible to receive services. The evidence supports the determination by the Service Agency that Claimant is not eligible for services.

ORDER

Wherefore, the following order is hereby made:

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

DATED: March 13, 2014


LAURIE R. PEARLMAN
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.