

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2016030323

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 28, 2016, in Napa, California.

G. Jack Bengé, Attorney at Law, represented service agency North Bay Regional Center (NBRC).

No one appeared at the hearing on claimant's behalf. Upon proof that notice of the hearing had been mailed to claimant's representative at the address given on claimant's hearing request, the hearing proceeded in claimant's absence.

The matter was submitted on March 28, 2016.

ISSUE

Is claimant eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act)?

FACTUAL FINDINGS

1. Claimant is 17 years old. She has been receiving medical treatment for psychiatric illness (mood disorder and anxiety) for several years. Since 2004 she has received special education services, with eligibility based primarily on emotional disturbance

and secondarily on learning disability. No evidence showed her to have epilepsy or cerebral palsy.

2. In September 2015, claimant asked NBRC to evaluate her eligibility for services under the Lanterman Act. NBRC's eligibility evaluation team interviewed claimant and her family, reviewed claimant's medical and psychological treatment history, and received current psychological assessments of claimant. NBRC issued a Notice of Proposed Action informing claimant that NBRC had determined that claimant was not eligible for Lanterman Act services. Claimant appealed and this hearing followed.

3. Claimant requested services from NBRC after being evaluated in August 2015 at Kaiser Permanente's Autism Spectrum Disorders Evaluation Center by psychologists Margaret O. Wilson and Anat Feinstein. Drs. Wilson and Feinstein concluded based on clinical assessments, behavioral observations, medical and psychological record review, and an overview of claimant's developmental history that claimant met diagnostic criteria for Autism Spectrum Disorder. Drs. Wilson and Feinstein did not conclude that claimant suffers from intellectual disability, or from any condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities.

4. In November 2015, psychologist Sara Schiff also evaluated claimant, using evaluation methods similar to those used by Drs. Wilson and Feinstein. Dr. Schiff concluded that claimant did not meet diagnostic criteria for Autism Spectrum Disorder. Rather, Dr. Schiff concluded that claimant's withdrawn affect and social awkwardness were more likely caused by her significant mental health challenges than by autism. Dr. Schiff also did not conclude that claimant suffers from intellectual disability, or from any condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities.

5. Claimant has been psychiatrically hospitalized either two or three times since 2013, each time following a suicide attempt by medication overdose. She takes several psychotropic medications daily. She shows little interest in personal grooming and has few if any friends.

6. Claimant enjoys reading and researches interesting topics using both the public library and the Internet. Her grades in school are good, although her mother believes that claimant is receiving instruction and being evaluated at a level that is not as challenging as it should be for a student in 11th grade.

7. Todd Payne, Psy.D., has served NBRC as a clinical psychologist for 13 years. As a member of NBRC's eligibility evaluation team, Dr. Payne reviewed both the assessment by Drs. Wilson and Feinstein and the assessment by Dr. Schiff.

8. Dr. Payne noted that Dr. Schiff described claimant as significantly more animated, engaged, and self-aware than did Drs. Wilson and Feinstein. If claimant's demeanor and behavior during the assessment by Drs. Wilson and Feinstein had been

manifestations of autism, Dr. Payne would have expected claimant's demeanor and behavior to be consistent from one assessment to the next. By contrast, differences in mood or attitude from one assessment to the other would readily explain why Dr. Schiff saw a different version of claimant than did Drs. Wilson and Feinstein.

9. Dr. Payne also noted that claimant has received mental health treatment for many years, starting at approximately age seven with psychological therapy. Signs of Autism Spectrum Disorder typically would have been present and clinically noted during this treatment, but were not. In addition, psychiatric disturbances and medications can produce social withdrawal and expressive inhibition resembling the social withdrawal and expressive inhibition that are characteristics of Autism Spectrum Disorder. For these reasons, Dr. Payne's opinion is that Dr. Schiff's assessment is more reliable than the assessment by Drs. Wilson and Feinstein.

10. Dr. Payne's testimony was persuasive and credible. The evidence did not establish that claimant suffers from Autism Spectrum Disorder, from intellectual disability, or from any condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including NBRC. (*Id.*, § 4620.)

2. A "developmental disability" qualifying a person for services under the Lanterman Act is "intellectual disability, cerebral palsy, epilepsy, [] autism" or any other condition "closely related to intellectual disability or [requiring] treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a); see Cal. Code Regs., tit. 17, § 54000, subd. (a).)

3. Conditions that are solely psychiatric in nature, or solely learning disabilities, are not "developmental disabilities" under the Lanterman Act, even if they cause significant intellectual or social impairment. (Cal. Code Regs., tit. 17, § 54000, subds. (c)(1), (c)(2).)

4. As set forth in Findings 1 and 10, claimant has not demonstrated that she has a developmental disability qualifying her for services under the Lanterman Act.

ORDER

Claimant's appeal from NBRC's decision deeming her ineligible for services under the Lanterman Act is denied.

DATED: April 4, 2016

_____/s/_____
JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This decision is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.