

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

VICTOR C.,

Petitioner,

vs.

WESTSIDE REGIONAL CENTER,

Respondent.

OAH No. 2012050940

California Early Intervention Services
Act (Gov. Code, § 95000 et seq.)

DECISION

This matter was heard by David Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 6, 2012, in Culver City.

Petitioner Victor C. was represented by Rocio C., his mother. (Initials are used to protect the privacy of Petitioner and his family.) Erin Fox, Attorney at Law and Fair Hearing Consultant, represented the Westside Regional Center (Respondent or WRC).

The parties presented the testimonial and documentary evidence described below and gave closing arguments. The record was closed and the matter was submitted for decision on June 6, 2012.

ISSUE

Is Petitioner eligible for services from Respondent?

EVIDENCE RELIED UPON

Documents: Petitioner's exhibit A and Respondent's exhibits 1-8.

Testimony: Erin Fox, WRC; Rocio C. (Petitioner's mother).

FACTUAL FINDINGS

Parties and Jurisdiction

1. Petitioner is a two-year eight-month-old boy (date of birth September 13, 2009), who seeks to be found eligible for services under the Early Start program,¹ due to speech and language developmental delays.

2. By a letter dated April 9, 2012 (Exhibit 6), WRC notified Petitioner's parents of its determination that Petitioner was not eligible for Early Start services. Petitioner's mother submitted a written appeal. This hearing was the result of the appeal.

Facts Related to Petitioner's Service Request

3A. Petitioner was referred to WRC for evaluation of his eligibility for the Early Start program due to concerns about his delayed speech and language development. WRC had an assessment performed by Emily Van Wormer, a speech and language pathologist (Exhibit 2), that included administration of the Preschool Language Scale, 5th Edition (PLS-5) and the Rosetti Infant-Toddler Language Scale. Petitioner was two years six months old (30 months old) at the time, and these measures yielded the following information of interest.

3B. On the PLS-5, Petitioner's auditory comprehension score placed him at an age equivalent of two years eight months (or 32 months, above his actual age), and his expressive communication score placed him at an age equivalent of one year nine months (or 21 months). Regarding expressive communication Ms. Van Wormer noted that Petitioner uses five words, whereas Petitioner's mother testified that he only uses two words: "hi" and "go." Ms. Van Wormer noted that Petitioner did not use different word combinations or combine 3-4 words in spontaneous speech or name a variety of pictured objects.

3C. On the six subjects reported from the Rosetti Infant-Toddler Language Scale, Petitioner scored as follows: age equivalent 15-18 months in Interaction Attachment and Pragmatics; age equivalent 24-27 months in Gesture; age equivalent 27-30 months in Play; age equivalent 30-33 months in Language Comprehension; and age equivalent 12-15 months in Language Expression, with "scattered skills" at 15-18 months. Regarding Language Expression Ms. Van Wormer noted that, per parent report, Petitioner has an expressive vocabulary of 30 words, including food items,

¹ "Early Start" is another name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), described more specifically in Legal Conclusions 1-3, below.

common objects, body parts and greetings and salutations, some of which Ms. Van Wormer observed, including his use of the word “no.”

3D. Ms. Van Wormer concluded that Petitioner’s expressive language skills were moderately to severely delayed and recommended that he receive speech and language therapy and enroll in a center based program to facilitate language and social language development.

4. WRC had a developmental assessment prepared by Lisa Ulrich, a physical therapist (Exhibit 3), when Petitioner was age 30 months. Of note, Ms. Ulrich found that he had difficulty getting his needs met because he did not have words for what he wanted. After administering tests and interviewing his parents, Ms. Ulrich found that Petitioner’s social-emotional functioning was in the 30 month range, his adaptive behavior was in the 23 month range, and that his receptive language equivalency was 28 months and expressive language equivalency was 17 months. Ms. Ulrich noted that Petitioner only used two words (hi and go) but made many sounds, and jabbers.

5. The WRC eligibility team determined that Petitioner was not eligible. Its worksheet (Exhibit 4) notes, among other things, that Petitioner’s expressive language development was in the range of 17-21 months based on the PLS-5. WRC referred Petitioner’s family to its office for Preventive Resources and Referral Services (PRRS) to explore general community resources.

6A. Petitioner’s parents submitted a report of his visit on March 5, 2012, with Hermela Gebremichael, a speech therapist at Kaiser Permanente (Exhibit A). Petitioner was age two years five months (or 29 months) at the time of the visit. Ms. Gebremichael noted it was reported to her that Petitioner has a vocabulary of about 15 words, mostly used when prompted, but his mother reported his only clear words are “yeah” and “no.” On a test of receptive language, Petitioner scored age two years seven months, above his age. Although Ms. Gebremichael administered the Expressive One Word Picture Vocabulary Test, her report cuts off in mid sentence before including any results.

6B. Ms. Gebremichael presented portions of the Bzoch-League Receptive-Expressive Language Emergent Language Scale (Bzoch-League Scale) “to obtain further information of [Petitioner’s] expressive language skills at home.” According to the parents’ report, Petitioner “appeared at the 13-18 month stage for expressive language skills which is moderately to significantly delayed for a child this age.”²

² Petitioner’s mother testified to her belief that this part of the report is in error and that Ms. Gebremichael intended to refer to the test results and not information from her and her husband. However, in the context of the report, it appears that the portions of the Bzoch-League Scale being referred to by Ms. Gebremichael relied upon information

Ms. Gebremichael noted that Petitioner used the words “no” and “yeah,” but did not produce any other words during this assessment.

6C. Ms. Gebremichael noted that Petitioner had a moderate deficit in expressive language and pragmatics (use of language in social contexts) and had trouble using words to communicate his wants and needs and to socially engage. She recommended that Petitioner should enroll in a speech and language based community program to address language, socialization and play skills.

LEGAL CONCLUSIONS AND DISCUSSION

1. Jurisdiction for this case is governed by the Individuals with Disabilities Education Act (IDEA), which is federal law (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which is state law that supplements the IDEA. Each act is accompanied by pertinent regulations. Thus, both federal and state laws apply to this case. In conformity with these laws, Petitioner presented a hearing request, and therefore jurisdiction for this case was established. (Factual Findings 1 and 2.)

2. When a person seeks to establish that he is entitled to government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also, 34 C.F.R. § 303.425(b) (1999).) Petitioner’s parents therefore bear the burden of proof in this case, since they are requesting relief which WRC has not agreed to provide, i.e., eligibility for services. (Factual Findings 1-6.)

3A. Pursuant to Government Code section 95014, subdivision (a)(1), as well as California Code of Regulations, title 17 (Regulation), section 52022, subdivision (a), an infant or toddler under the age of three is eligible for services under the Early Start program if he or she has a developmental delay in one or more of the following areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Under Government Code section 95014, subdivision (a)(1), the developmental delay must represent a “significant difference between the expected level of development for their age and their current level of functioning,” and such “significant difference is defined as a 33-percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33 percent delay in two or more developmental areas.” Therefore, as Petitioner is older than 24 months, to be eligible there must be either a delay of 50 percent in one developmental area or a 33-percent delay in two or more developmental areas

supplied by the parents, as its purpose was to assess Petitioner’s expressive language skills in his home setting. Petitioner’s parents would be the source of such information.

3B. Regulation section 52082, subdivision (e), further clarifies that when the infant's eligibility for services is evaluated by standardized, normed or criterion referenced instruments, a significant delay "shall be established when an infant's or toddler's age equivalent score falls one third below age expectation."

3C. An infant may also be found eligible for Early Start services if he or she has an "established risk," as defined in Government Code section 95014, subdivision (a)(2), and Regulation section 52022, subdivision (b). There was no claim or evidence that Petitioner was eligible under the criteria for having an established risk.

4A. In this case, it was not established by sufficient evidence that Petitioner has a significant delay, as defined by statute, in any of the five areas of development. Examining the branch of eligibility requiring two areas of development with at least a 33 percent delay, other than in his communication, Petitioner's other areas of development do not score that low, with the lowest, adaptive behavior, assessed at the age equivalency of 23 months when Petitioner was 30 months old. (Factual Finding 4.)

4B. The other branch of eligibility requires one area of development with at least a 50 percent delay. The assessments of Petitioner's communication skills present a very mixed bag. First, communication skills are analyzed as a single skill area for purposes of eligibility, and are not broken down into the separate components of receptive and expressive language. Petitioner's receptive language assessment by Ms. Van Wormer places him above his actual age. The report by Ms. Gebremichael assessed receptive language age equivalency at 32 months when Petitioner was 30 months old. Even with his lower scores for expressive language, discussed in more detail below, it was not established that Petitioner's overall communication development demonstrated at least a 50 percent delay. (Factual Findings 3-6.)

4C. There are disturbing inconsistencies in the information regarding Petitioner's expressive language, the assessments, and the decision by WRC's eligibility team. First, Ms. Van Wormer noted that Petitioner used five words in her discussion of the PLS-5, but referenced a 30-word vocabulary in her discussion of the Rosetti Infant-Toddler Language Scale. Ms. Van Wormer also witnessed Petitioner using the words "no" and "yeah" when Petitioner's mother testified that the only words he uses are "hi" and "go." Further, Ms. Van Wormer scored Petitioner's expressive language equivalents as one year nine months (21 months) on the PLS-5 and 12-15 months with scattered skills at 15-18 months on the Rosetti Infant-Toddler Language Scale, and Ms. Ulrich's assessment of expressive language was at 17 months. However, the WRC eligibility team's eligibility worksheet listed Petitioner's expressive language equivalent as 17-21 months, referring, incorrectly, to the PLS-5 score. Therefore, it was not clear where the eligibility team got this age range. Ms. Gebremichael reported she was told Petitioner has a vocabulary of 15 words with his

mother reporting that his only clear words are “yeah” and “no,” which two words Ms. Gebremichael also heard Petitioner utter. Ms. Gebremichael’s report is incomplete and does not include an outcome or conclusion on a test to measure expressive language.

4D. In conclusion, some assessments of Petitioner’s expressive language provide age equivalent ranges that, at their lowest values, would put Petitioner at a 50 percent delay or slightly more delayed, but the highest values in these same assessments put him as having a delay that is less than 50 percent and would not qualify him for eligibility. When combined with his strength in receptive language, Petitioner does not satisfy the requirement of demonstrating at least a 50 percent delay in communication skills. Therefore, it was not established that Petitioner is eligible for services under the Early Start program due to a significant developmental delay. (Factual Findings 3-6.)

ORDER

Petitioner is not eligible for services from the Westside Regional Center under the California Early Intervention Services Act.

DATED: June 7, 2012.

DAVID ROSENMAN
Administrative Law Judge
Office of Administrative Hearings