

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DANNY B.,

Claimant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2012100493

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Fresno, California, on November 6, 2012.

Claimant represented himself.

Shelley Celaya, Client Appeals Specialist, represented the service agency, Central Valley Regional Center (CVRC).

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Was CVRC's original determination that claimant was eligible for regional center services due to a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals clearly erroneous pursuant to Welfare and Institutions Code section 4643.5, subdivision (b)?

FACTUAL FINDINGS

1. Claimant is a thirty-one-year-old man who lives independently in the community. He was found eligible for CVRC services at the age of fifteen.
2. On September 26, 2012, CVRC sent a Notice of Proposed Action (NPA) informing claimant that the Interdisciplinary Eligibility Team had completed a comprehensive reassessment to determine claimant's ongoing eligibility for CVRC services. The team determined he did not have a developmental disability and therefore the original determination that he had a developmental disability was clearly erroneous. The NPA stated that CVRC would no longer be providing services to claimant after October 31, 2012.
3. On October 1, 2012, claimant filed a Fair Hearing Request, appealing CVRC's determination that claimant is not eligible for regional center services.
4. Claimant asserts that he remains eligible for regional center services under the fifth category. Claimant does not contend that he is eligible for regional center services under any other category of disability. Claimant testified that he wants his eligibility for services to continue.

Psychological Assessments and Testimony Regarding the Fifth Category Eligibility

5. Claimant's early childhood was difficult. His psychological evaluations report early childhood abuse and neglect by his biological mother, and placement in foster care at the age of three. He was adopted by his foster family at age six, but released by that family back into the care of Tulare County Department of Social Services due to his severe psychiatric and behavioral problems at the age of fourteen. Records indicate he suffers from Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, Psychiatric Disorder Not Otherwise Specified, and Post Traumatic Stress Disorder.

6. Carol Sharp, Ph.D., staff psychologist at CVRC, reviewed claimant's records and testified at hearing. Dr. Sharp's review of records included a Psychological Evaluation completed by Stanley Littleworth, Ph. D, on February 5, 1996, when claimant was fifteen years old, a Psychological Evaluation completed by Michael Antrim, Ph.D., on January 4, 2005, when claimant was twenty-four years old, and a Psychological Evaluation completed by Stanley Littleworth, Ph.D., on July 30, 2012, when claimant was thirty-two years old.

Dr. Littleworth's February 5, 1996, assessment was completed at the request of the Tulare County Child Protective Services to determine whether claimant was eligible for regional center services. At the time of this assessment, claimant had recently been hospitalized because he was exhibiting increasingly aggressive behavior toward others. Dr. Littleworth administered the Wechsler Intelligence Scale for Children – III (WISC-III). Claimant's Verbal IQ score was 52, his Performance IQ was 80, with a Full Scale IQ of 64. However, Dr. Littleworth noted that the Full Scale IQ score is unreliable because of the significant (28 point) discrepancy between the Verbal and Performance scores. At that time,

the CVRC team initially found claimant was not eligible for services, but after an administrative review, found him “Provisionally” eligible under the fifth category of eligibility.

Dr. Littleworth’s February 5, 1996 assessment report documents results from a prior assessment of claimant, conducted in April 1988. That assessment yielded a Verbal IQ score of 57 and a Performance IQ score of 98. An assessment completed in June 1991 found claimant to have a Verbal IQ score of 60 and a Performance IQ score of 85.

Dr. Michael F. Antrim conducted an assessment of claimant on January 4, 2005, when claimant was twenty-four years old. Dr. Antrim administered the Wechsler Adult Intelligence Scale – Third Edition (WAIS-III) and found claimant to have a Verbal IQ of 73, a Performance IQ of 95, and a Full Scale IQ of 81.

On July 30, 2012, Dr. Littleworth completed another assessment of claimant to determine ongoing eligibility for regional center services. Because several psychological assessments had been conducted on claimant between the ages of seven and twenty-four, and regional center eligibility is determined based on a person’s condition prior to the age of eighteen, Dr. Littleworth did not administer an IQ test in 2012. Dr. Littleworth’s 2012 assessment included a review of claimant’s records and an interview of claimant. Dr. Littleworth’s report states that:

[Claimant’s] most recent intellectual assessment reveals Average performance/nonverbal abilities which suggest that his program needs are not similar to an individual with Mild Mental Retardation. The assessment date on record as of 1/4/05 is sufficient to rule out Danny’s eligibility for Regional Center services. My opinion is that his current diagnosis is that of Learning Disorder, NOS which is consistent with Danny’s educational records documenting a Specific Learning Disability as the reason he qualified for special education services.

[Claimant] has exhausted the resources of the Regional Center. He has been suspended from, or refused to attend, every vocational program that has been offered to him. He is considered permanently disabled under the SSI program, which provides him with a basic income and which allows him to earn additional income in accord with SSI regulations. [Claimant] is quite disabled given the extent of his learning disability, psychiatric and behavioral dysregulation.

Dr. Sharp testified at hearing that the IQ test scores claimant achieved in the 1996 assessment may have been lower than claimant’s actual IQ due to the mental health issues claimant was coping with at that time. He had recently been hospitalized to address behavioral and psychiatric concerns. Dr. Sharp opined that claimant may have achieved a score that is lower than his actual IQ if other factors, such as an inability to attend to the administration of the evaluation, interfered with his performance. She also stated that it is

not possible for a person to obtain a score that is higher than his or her actual IQ. Therefore, Dr. Sharp believes the IQ score claimant achieved in 2005 is a more accurate measure of claimant's abilities. In 2005 claimant obtained a Verbal IQ score of 73 and a Performance IQ score of 95.

Dr. Sharp acknowledged that claimant's mental health issues and learning disability make life difficult for claimant. However, his needs, in her opinion, are not similar to the needs of a person with mental retardation. Nor does claimant require treatment similar to that required by a person with mental retardation. At this time, the only service claimant receives from the regional center is a bus pass for transportation.

7. Monique Corbo serves as claimant's case manager at the regional center. Ms. Corbo testified that claimant receives SSI benefits and is his own payee for those benefits. Claimant lives independently, navigates the public transportation system appropriately, and pays his own bills. He also tends to his personal hygiene and self-care.

8. Claimant testified at hearing that he has difficulty focusing on a job because of his anger issues and the need to stay "on task." He would like to continue receiving support from the regional center because he gets frustrated sometimes.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for providing services and supports for persons with developmental disabilities and an obligation to help them, which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, and that constitutes a substantial disability for the individual. Developmental disabilities include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a)).

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54001, subd. (c).)

2. "Substantial handicap" is defined by regulations to mean "a condition which results in major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit 17, § 54001, subd. (a).) Because an individual's cognitive and/or social functioning is multifaceted, regulations provide that the existence of a major impairment shall be determined through an assessment that addresses aspects of functioning including, but not limited to: (1) communication skills; (2) learning; (3) self-care; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (Cal. Code Regs., tit. 17, § 540001, subd. (b).)

3. The legal standard for finding a person who has been deemed eligible for services no longer eligible is described in Welfare and Institutions Code section 4643.5(b):

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous. (Welf. & Inst. Code, § 4643.5, subd. (b)).

4. Evidence provided at hearing supports CVRC's finding that its original determination that claimant suffers from a condition closely related to mental retardation or requiring treatment similar to that required by people with mental retardation was clearly erroneous.

5. No evidence was offered that claimant suffers from autism, mental retardation, cerebral palsy, or epilepsy.

ORDER

Claimant's appeal from CVRC's decision that claimant is no longer eligible for regional center supports and services under the Lanterman Act is DENIED.

DATED: November 21, 2012

ELAINE H. TALLEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)