

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2016010052

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on July 7, 2016, in Napa, California.

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

Claimant's mother advocated for him at the hearing. Claimant was present.

The matter was submitted on July 7, 2016.

ISSUE

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

FACTUAL FINDINGS

1. Claimant is 18 years old. In August 2015, when he was 17, claimant's mother asked NBRC to evaluate his eligibility for services under the Lanterman Act; about two months later, the Sonoma County Superior Court made the same request. After evaluating 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.

Educational History

2. Claimant's mother became concerned very early in claimant's formal education about claimant's performance in school. She suggested to his school district that he repeat the first grade, but the district persuaded her that he should not. She also attempted unsuccessfully to obtain special education services for claimant during his early elementary education.

3. Claimant began receiving special education services when he was 10, and in fifth grade. His first Individualized Education Program (IEP) described the primary disability qualifying claimant for special education services as a speech and language impairment, which caused "a significant discrepancy between his verbal comprehension and his perceptual reasoning."

4. Claimant did not receive special education services while he was in middle school. During this time, his grades declined, although his standardized test scores improved. He was suspended from school several times for disruptive and violent behavior, and missed school frequently during eighth grade. He played on a football team during this period, however.

5. Claimant resumed receiving special education services during his first year of high school. His initial high school IEP in March 2013 described his primary disability as a "specific learning disability," requiring "small group instruction at a tailored pace in core curriculum areas." Claimant's teachers described him as friendly and sociable among classmates, but passive and unmotivated with respect to classroom learning. As of January 2015, during claimant's junior year of high school, school district evaluators gauged claimant's reading proficiency to be at approximately a fourth-grade level.

6. Claimant and his mother moved between claimant's junior and senior years of high school. During the 2015–16 academic year, which would have been claimant's senior year of high school, he seldom went to school. He did not graduate from high school but hopes to enroll during the coming academic year in a vocational transitional program for students between 18 and 22 years old.

Mental Health History

7. Claimant first used marijuana when he was 11 years old, which also is when his school performance began to decline. In October 2015, claimant reported to clinical psychologist Melanie Johnson, Ph.D., that he had used marijuana nearly every day since the first time he used it. Since he was about 14, claimant also has used alcohol and other mood- or consciousness-altering drugs regularly.

8. Between April 21, 2015, and July 19, 2015, claimant was an inpatient at R House, a residential substance abuse treatment program for adolescents.¹ His mother arranged for this treatment. R House counselors Selena Foster, MFT Intern, and T. Reese Clark, MFT, noted in their discharge summary regarding claimant that he did not participate meaningfully in the R House treatment program.

9. Claimant's high school teachers previously had described claimant as friendly, but he made a different impression on R House staff members. Foster and Clark described claimant as "kind" and "respectful," but noted that he "often was seen walking around and sitting alone," and that he experienced difficulty "in the ability to initiate or sustain a conversation with others." Claimant often sat at his desk in his room in the dark, and told staff members that he did so because he feared having people watch him.

10. Foster and Clark also noted that claimant's mood seemed to deteriorate during his stay, and that he became "irritable and angry." On June 2 he fought with another R House resident; and in a fit of anger on July 11 he pushed over a television, threw a clock radio, and used a closet rod to hit a wall or door repeatedly. Finally, near the end of his stay at R House, "staff reported it appeared that [claimant] was talking to himself. When asked in individual session if he had any auditory or visual hallucinations he reported no."

11. The R House discharge summary by Foster and Clark states their opinion that claimant met diagnostic criteria in July 2015 for "Pervasive Developmental Disorder, NOS" (a disorder related to autism) and "Depressive Disorder, NOS." Foster and Clark recommended continuing individual mental health treatment for claimant.

12. When claimant returned home from R House, his mother observed a distinct change in his behavior. Claimant's moods were more negative and erratic than they had been in the past, and he was disrespectful and aggressive toward her. He told his mother as well that he believed people were watching him outside their home.

13. Although claimant reported to Foster and Clark that he intended to maintain sobriety after leaving the residential program, he had resumed daily marijuana use within a few months after his discharge. The evidence did not establish whether or not claimant continued regular alcohol or drug use at the time of the hearing.

14. On October 27, 2015, claimant was arrested after he threatened his mother with a hammer.² A neighbor also reported after claimant's arrest that he had vandalized the

¹ R House staff members recommended to claimant's mother that she consult NBRC regarding claimant's eligibility for Lanterman Act services.

² In connection with juvenile court proceedings following this arrest, a Sonoma County Superior Court Judge also asked NBRC to evaluate claimant's eligibility for Lanterman Act services.

apartment complex where he and his mother lived about a week earlier, by breaking two windows, a motorcycle headlight, some planters, and the mailbox.

15. On October 19, 2015, shortly before his arrest, claimant met with Dr. Johnson. While claimant was detained in Sonoma County's juvenile hall after his arrest, he interacted with several other psychological professionals, including Laura Doty, Ph.D.; the juvenile hall clinical mental health staff; and Jack Crimmins, Ph.D., from the Sonoma County Department of Health Services. These observers reported consistently that claimant seemed to focus strongly on what Dr. Doty called "internal stimuli." He smiled, whispered, and laughed to himself frequently, but denied experiencing auditory hallucinations. Claimant displayed similar behavior at the hearing, but was not asked about hallucinations.

16. Dr. Doty interviewed claimant twice in connection with his juvenile court proceedings, once in mid-November 2015 and again in late January 2016. She described him on both occasions as polite but apparently unable to maintain attention to their conversation, and as showing little understanding of the charges against him. She suggested several diagnostic explanations for her observations, including a communication disorder, an autism spectrum disorder, or a "psychotic process" such as "the incipient phase of a Schizophreniform Disorder."

17. Claimant did continue individual mental health treatment after leaving R House. He currently is in treatment with a psychiatrist and a psychotherapist for "Schizophreniform Disorder" and "Borderline Intellectual Functioning."

NBRC's Evaluation of Claimant

18. NBRC sought and received a current psychological and educational assessment of claimant by Dr. Johnson. Dr. Johnson interviewed claimant and his mother and administered several cognitive and psychological tests to claimant, and prepared a written report describing her conclusions.

19. Dr. Johnson did not observe any indications of autism or any autism spectrum disorder. She did observe, however, that claimant's cognitive function, his mental processing speed, and his adaptive skills for daily living were poor, and that his "foundational acquired knowledge is also quite incomplete." She noted that his "difficulties with substance abuse are significant," and that psychotherapy and medication likely would be important tools for improving his "functioning and relationships."

20. Todd Payne, Psy.D., has served NBRC as a clinical psychologist for more than 10 years and is a member of NBRC's eligibility evaluation team. Dr. Payne and the team reviewed several documents in evaluating claimant, including a report of an interview of claimant and his mother by an evaluation team member; claimant's educational history and R House discharge summary; Dr. Doty's report of her first interview with claimant; and Dr. Johnson's report.

21. None of the evaluators suspected that claimant has epilepsy or cerebral palsy, and claimant and his mother do not believe that he does. Instead, the NBRC team's evaluation focused on determining whether claimant has an autism spectrum disorder, an intellectual disability, or any other condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disabilities.

22. Dr. Payne noted that claimant's educational records do not suggest that claimant had any unusual difficulty with social interactions or relationships before his teens, and do not suggest that claimant ever has engaged in repetitive or ritualistic behaviors typical of autism spectrum disorders. Although R House counselors suggested that claimant had an autism spectrum disorder, Dr. Payne and the NBRC evaluation team concluded on the basis of additional information including Dr. Johnson's evaluation that he did not.

23. Based on his review of claimant's educational records and of Dr. Johnson's assessments, Dr. Payne concluded that claimant has a communication-related learning disability. He noted that a cognitive evaluation of claimant when claimant was 10 was highly consistent with the conclusion that claimant's reasoning ability was in the normal range even though he experienced communication difficulties; Dr. Payne also noted that claimant had received special education services for several years, and that the school districts providing those services had classified claimant consistently as having a communication-related learning disability but not a generalized intellectual disability.

24. Dr. Payne stated that schizophrenia and related psychotic disorders usually involve cognitive deficits, and that acute symptoms such as hallucinations can interfere with communication and with interactive testing. He observed that because severe mental illnesses can produce profound social and cognitive effects, and can motivate substance abuse, mental illnesses beginning in youth or adolescence can cause significant difficulty for health professionals seeking diagnostic explanations for apparent intellectual and social impairments.

25. Overall, Dr. Payne and the NBRC team concluded that the information available to them did not show claimant's poor cognitive function and academic deficits to result from intellectual disability or any similar condition. They concluded instead that claimant's poor cognitive function and academic deficits resulted from the impacts of mental illness on an adolescent already experiencing a communication-related learning disability.

26. Dr. Payne's testimony was persuasive and credible. The evidence did not establish that claimant suffers from an 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. Instead, the evidence established that claimant has a learning disability, and that since early adolescence this learning disability and claimant's significant and worsening mental health challenges have impaired his education and his judgment.

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, [or] 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 21, 22, and 26, the evidence did not demonstrate claimant’s eligibility for services under the Lanterman Act.

ORDER

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

DATED: July 20, 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.