

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KATHRYN F.,

Claimant,

vs.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2011070561

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 8, 2011, in Santa Ana.

Claimant Kathryn F. was represented by her father and authorized representative, Dr. William F.¹

Christina M. Petteruto, attorney at law at Woodruff, Spradlin & Smart, a P.C., represented the Regional Center of Orange County (RCOC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 8, 2011.

ISSUE

Whether claimant is eligible to receive services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

¹ Initials and family titles are used to protect the privacy of claimant and her family.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 20-year-old woman.
2. By letter dated June 16, 2011, the Service Agency notified claimant's father of its determination that claimant is not eligible for regional center services because she does not meet the criteria set forth in the Lanterman Act.
3. On July 12, 2011, claimant's father filed a fair hearing request to appeal the Service Agency's determination regarding eligibility. In the fair hearing request, claimant's father specified that claimant should be found eligible on the grounds that she has "a qualifying diagnosis of autism and is substantially handicapped."

Claimant's Background

4. Claimant lives at home with her adoptive father and his significant other. She agreed to live with her father after having run away from a residential placement center in Utah and finding herself in a homeless shelter. She attends an adult transitional program in her school district. Claimant was hospitalized several times as a danger to herself or to others between the ages of 13 and 18. She got into fights in school and was home-schooled for a time. Claimant was placed in a residential facility when her adoptive mother was terminally ill and her father could not fully attend to her safety. She ran away from the last two residential facilities in which she was placed. Claimant requires supervision and prompting in self-care and grooming tasks. She resists cleaning herself and her clothes. She heats food in a microwave. She can understand money but spends impulsively, gets upset frequently when asked to do chores, and has some trouble taking public transit. She has little insight into her behavior. She makes eye contact briefly, and has a short attention span.
5. Claimant's father testified that claimant was probably never adequately evaluated. He and claimant's mother accepted a diagnosis of emotional disturbance from claimant's school district because that led to claimant's receiving special education services. He was not aware of the availability of regional center services and the need for an assessment and an accurate diagnosis. For most of claimant's life her father was indifferent to whether claimant was diagnosed as emotionally disturbed or autistic; his concern was the safety of his family, "so we're here now instead of years earlier." The behavioral services that claimant has received have been ineffective. Claimant's father fears that his daughter will have no friends, family, or safety net when he is no longer alive.

Claimant's 2007 Application to the Service Agency

6. On February 2, 2007, an attorney acting on claimant's behalf asked the Service Agency to provide services to claimant.

7. RCOC's senior service coordinator for intake and assessment, Lori Burch, and a service coordinator, Jorge Castanada, met with claimant and her adoptive mother on February 26, 2007, and conducted a social assessment. In her report, Ms. Burch recommended that the Service Agency obtain claimant's medical, educational, and psychological records and have an eligibility review group determine claimant's eligibility for regional center services.

The Service Agency's May 2007 Trans-disciplinary Assessment of Claimant and Determination of Ineligibility

8. On May 28, 2007, a trans-disciplinary team comprising Peter Himber, M.D., Kyle Pontius, Ph.D., and Ms. Burch met with claimant and her mother to determine claimant's eligibility for regional center services. In its Trans-disciplinary Assessment, the team wrote that it obtained claimant's history from her mother and observed and interacted with claimant, and that Dr. Himber conducted a neurological examination. (Ex. 9.) The team noted that little was known about claimant's biological mother's pregnancy, that "[a]ll of [claimant's] developmental milestones were normal," and that claimant's adoptive mother did not have concerns about claimant's behavior until claimant began attending school.² Claimant's behaviors—oppositional, defiant, and physically aggressive—became more significant in middle school. As a result of her behavioral issues, claimant was hospitalized in 2003, when she received a diagnosis of Mood Disorder NOS, Rule out Psychosis and Intermittent Explosive Disorder. Claimant was subsequently diagnosed by the Orange County Department of Mental Health (DMH) with Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS). The trans-disciplinary team noted that claimant was receiving special education services under the diagnostic category of severe emotional disturbance as well as autistic-like behaviors.

9. Claimant's mother reported that claimant did well in classes she liked, had poor social skills, preferred to play by herself, cheated when playing with others, had anger outbursts and displayed physical aggression toward family members and peers, was not sensitive to the emotional needs of others, and had difficulty with transitions. She also reported that claimant tapped her fingers and occasionally rocked back and forth, but did not have any nonfunctional routines. She reported that claimant spent much of her time on the computer, was interested in Japanese animation, occasionally lined up toys, and lacked safety awareness. She reported that claimant used full sentences and spoke clearly, had difficulty expressing her emotions, and perseverated on her desires.

² Claimant's father testified that in 2007 his wife was terminally ill and incapable of caring or advocating for claimant; she was taking medications that would have adversely affected her ability to provide accurate information to the Service Agency. He believes that what she told the Service Agency probably reflected her wishes and hopes; for example, she did not inform the Service Agency that claimant had been expelled from several preschools.

10. The trans-disciplinary team concluded that claimant was substantially disabled in the areas of self-direction and capacity for independent living, but was not substantially disabled in the areas of mobility, learning (based on intelligence test results), receptive and expressive language (although she demonstrated some vocabulary difficulties), and self-care.

11. The trans-disciplinary team observed that claimant was easy to engage, displayed no repetitive body motions, made fairly good eye contact, did not line up toys or objects, and was conversant on topics of interest to her. The team noted that the content of claimant's conversation reflected immaturity, and conversation was not reciprocal. The Trans-disciplinary Assessment noted that claimant's score on the Childhood Autism Rating Scale (CARS) based on parental report was 31.5, in the mildly autistic range, but based on Dr. Himber's observations the score was 27.5, below the autistic threshold of 30.

12. The team wrote that although claimant was reported to have "mildly atypical social and communication skills and several atypical behaviors that are characteristic of autistic spectrum disorder,"

[she] would not meet all of the diagnostic criteria for Autistic Disorder so that a diagnosis of Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS) would be indicated. However, based on our observations today, [claimant's] behavior was clearly immature but not frankly atypical. Accordingly, we do not believe that a diagnosis of PDD-NOS is indicated.

[¶] . . . [¶]

Based on parental report, our observations and objective psychometric testing, [claimant] is substantially disabled in the following areas of major life activity: Self-Direction and Capacity for Independent Living. Based on all the available information, [claimant] does not have a diagnosis that would make her eligible for RCOC services. Furthermore, regardless of her diagnosis, she is not substantially disabled in three or more areas of major life activity which are required for eligibility for RCOC services. Claimant does not require services similar to that of an individual with mental retardation and is not eligible for services under the Fifth Category.³

³ "Fifth category" refers to a category of developmental disability eligible for regional center services, defined at Welfare and Institutions Code section 4512, subdivision (a), as comprising "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation," but that do "not include other handicapping conditions that are solely physical in nature."

(Ex. 9.)

13. On June 20, 2007, after reviewing the May 2007 Trans-disciplinary Assessment and other records, the Service Agency's eligibility review group concluded that claimant was not eligible for regional center services. In a letter to claimant's father, the Service Agency wrote that claimant did not have a diagnosis that would make her eligible for services, and that claimant "does not have a substantially handicapping developmental disability." (Ex. 3.)

14. In its June 20, 2007, letter, the Service Agency noted multiple diagnoses in claimant's records, including the PDD-NOS diagnosis that claimant received from the DMH in 2006. The Service Agency wrote—incorrectly—that the trans-disciplinary team had also diagnosed claimant with PDD-NOS. It explained that persons with a diagnosis of PDD-NOS are not eligible for regional center services unless the "condition is judged to be similar to Mental Retardation or requires similar services to individuals with Mental Retardation. Information regarding Kathryn's status does not support the global deficits typically seen in individuals with the diagnosis of Mental Retardation," and the trans-disciplinary team concluded that claimant "is not eligible for services under the Fifth Category." (Ex. 3.)

Dr. Large's 2009 Neuropsychological Assessment

15. On June 18, 22, and 23, 2009, Mary Large, Ph.D., a licensed psychologist, performed a neuropsychological assessment of claimant at claimant's father's request. In her assessment report dated July 17, 2009, Dr. Large wrote that claimant had recently been diagnosed on the autistic spectrum, and claimant's father wanted "diagnostic clarity" as well as guidance as to appropriate services and supports for claimant.

16. Dr. Large met with claimant and her father and spoke with Heather Johnson, claimant's therapist at Excelsior Youth Center, and with Carol Shack-Lappin, claimant's case manager at the DMH. Dr. Large obtained a detailed developmental history from claimant's father, reviewed records in claimant's file, made observations of claimant's behaviors, and administered the following diagnostic instruments: Wechsler Adult Intelligence Scale, 3rd Edition (WAIS-III); Woodcock-Johnson Tests of Achievement, 3rd Edition; Behavior Assessment Scale for Children; Vineland Adaptive Behavior Scales (Vineland-II); and Wisconsin Card Sorting Test.

17. In her Neuropsychological Assessment report, Dr. Large observed that claimant demonstrated "notably limited effort and motivation," reflecting "a profound lack of confidence and sense of defeat or inadequacy." Claimant presented with notable "social challenges and conversational limitations" and demonstrated "relatively limited levels of engagement overall." (Ex. 11.)

18. In the context of determining whether claimant has a developmental disorder, Dr. Large noted that, with respect to socialization, claimant had "a long history of demonstrating impairments in use of nonverbal behaviors, including eye contact, facial expression, and body language, to regulate or mediate social interaction;" claimant had

“profound problems developing peer relationships appropriate to her developmental level,” having only had two, superficial, friendships; and demonstrated “[m]arked limitations in social and emotional reciprocity” dating to her early development. (Ex. 11.) She also noted claimant’s “limited awareness” of how hygiene and grooming may negatively impinge upon social . . . relationships,” and that claimant’s social judgment is limited to such an extent that “her ability to evaluate potential safety issues in relation to peers, and especially in relation to male peers, appears to be profoundly impaired, placing her at risk for potential exploitation or harm.” (*Id.*)

19. With respect to restricted, repetitive, and stereotyped patterns of behavior, Dr. Large noted claimant’s obsessive interest in anime, which resulted in her stealing money from her brother and selling her possessions in order to buy new anime materials; claimant’s compulsive collecting of dolls when younger, which she did not play with but mutilated or destroyed; her early history of engaging in such apparently purposeless behaviors as pacing and pounding on walls; and her difficulties with transition, which was so problematic that she was asked to stay at home on school days when there was to be a substitute teacher. (Ex. 11.)

20. With respect to communication impairments, Dr. Large noted that, though there was an absence of information of marked delay in spoken language, and no reports of echolalic, repetitive, or other idiosyncratic use of language, claimant had “persistent problems with conversational speech.” (Ex. 11.) “From early on in her development and continuing to the present time, [claimant] has had profound problems initiating and sustaining conversation with others, including peers and adults.” (*Id.*)

21. Dr. Large concluded that,

[w]hen looking at all of these symptoms together, [claimant] meets the full criteria for an Autistic Disorder. I would agree with previous evaluators who note that her pattern of symptom expression is consistent with an atypical presentation, as some of the symptoms that she manifests persistently over time did not emerge until somewhat later than is considered typical Nonetheless, [claimant’s] symptom presentation is unequivocal and consistent with an Autistic Disorder.

(Ex. 11.)

22. Dr. Large then determined that claimant demonstrated a substantial disability in three or more areas of major life activity. She noted various reports of claimant’s limited self-care abilities, particularly with respect to hygiene, dressing, and toileting. She does not brush her teeth without prompting, does not routinely bathe and clean her hair, only recently mastered a routine for caring for hygiene during her menses, does not consistently change her clothes when they are dirty, and does not clean herself adequately after using the toilet, thereby soiling her underclothes.

23. Dr. Large found that claimant's symptoms "markedly compromise her ability to engage in age-appropriate self-direction. Her overwhelming focus on narrow interests to the exclusion of other activities, her socially withdrawn behavior, and her relative inflexibility markedly interfere with her ability to display behavior, and to participate in situations and activities that are functionally age typical. . . . For instance, it is unlikely that [claimant] would have the capacity to engage in activities such as shopping so that she can prepare meals for herself," or maintain her medication regimen. (Ex. 11, p. 33.)

24. Dr. Large also found that claimant has substantial disabilities in "at least three of the seven areas of major life activity [S]he exhibits significant functional impairment in relation to self-care, self-direction, economic self-sufficiency, age-appropriate independence, receptive and expressive language, and learning. Deficits in these areas, coupled with her diagnosis of an Autistic Disorder, suggest that she is eligible for regional center services." (Ex. 11.)

25. Dr. Large did not administer the Autism Diagnostic Observation Schedule (ADOS) or the Autism Diagnostic Interview-Revised (ADI-R). At hearing, Dr. Large acknowledged that the ADOS was the "gold standard" and that she does sometimes use it, but she testified that it is not diagnostic, and neither is the ADI-R. A diagnosis of a developmental disability is made by looking at multiple data points from people who have knowledge of the individual in question. The ADOS assists the diagnosis by providing additional information, but it is not required in order to make the diagnosis.

Claimant's 2011 Application to the Service Agency

26. On January 24, 2011, claimant's father asked the Service Agency to reconsider claimant's eligibility for regional center services in light of Dr. Large's diagnosis of autistic disorder.

27. RCOC's intake service coordinator, Lori Burch, met with claimant and her father on February 24, 2007, and conducted a social assessment. In her report, Ms. Burch recommended that the Service Agency obtain claimant's medical, educational, and psychological records and have an eligibility review group determine claimant's eligibility for regional center services.

The Service Agency's June 2011 Eligibility Review Group's Determination of Ineligibility

28. In June 2011, the eligibility review team, comprising Dr. Pontius, Arleen Downing, M.D., and Shirley Brinson, R.N., concluded that claimant is not eligible for regional center services.

29. Dr. Pontius based that conclusion in part on an April 18, 2011, visit to claimant's school, which he had made in order to "reconcile the discrepancy in professional opinion." Dr. Pontius had decided to observe claimant interacting with her peers at school as a result of Dr. Large's 2009 diagnosis of autistic disorder. (Ex. 4.) In June 2011, Dr. Pontius wrote that claimant's "problems most likely stem from a combination of genetics, and her

prenatal exposure to drugs and alcohol,” concluding that she does not have an eligible condition, including fifth category. (Ex. 4.) Dr. Downing wrote that claimant “has ongoing mental health needs; she does not have an eligible diagnosis for regional center, and does not have substantial disabilities in a minimum of 3 major life areas.” (*Id.*)

30. At hearing, Dr. Pontius testified that during his school visit claimant’s behavior was managed to prevent her from acting out; she is very explosive, and her emotions express themselves in a very wild manner. She did not behave in a manner consistent with autistic disorder. Rather, her behavior, reflecting a qualitative impairment in social interaction, is a result of emotional dysregulation; it is not consistent with a core deficit in social instinct, which is present in individuals with autistic disorder. Nor is claimant functioning like someone with mental retardation; her IQ is much higher than mentally retarded individuals, and the treatment she requires is consistent with someone with a psychiatric condition, not someone with mental retardation.

31. Dr. Pontius further testified that a notation in claimant’s school district’s records, stating that claimant displays characteristics of a person with autism, is not a diagnosis; school personnel are not qualified to make that diagnosis. Claimant has been hospitalized due to psychiatric conditions not serviced by regional centers. A Children’s Hospital of Orange County admissions record dated December 21, 2007, states that claimant has “a history of autism.” (Ex. 18.) But the document does not discuss or diagnose autism. Dr. Pontius also reviewed the County of Orange Health Care Agency (HCA) assessment dated February 19, 2010; documentation of that assessment includes progress notes from Anna-Lisa Stonehill, M.D., who diagnosed claimant with mood disorder NOS, PDD atypical autism, and learning disorder NOS. No one from the HCA did an assessment and found autistic disorder. Dr. Pontius also disagrees with the secondary diagnosis of atypical autism, which in any event is not an eligible condition. Dr. Pontius further testified that claimant’s elopement from Red Rock Canyon School to join a boy she had met on the internet is very inappropriate socially, but describes a person with social savvy inconsistent with autistic disorder. She managed to get the bus fare she needed from a stranger, which required manipulative skills not consistent with autism. She has very few friends, but that is due to her emotional outbursts, not to the social naiveté characteristic of autism. When she threatens others, she does so as a manipulative tactic to get what she wants; her poor behavior is not a result of an inability or unawareness.

32. Dr. Pontius disagrees with Dr. Large’s diagnosis of autism disorder. The symptoms noted by Dr. Large as autistic could also be symptoms of bipolar disorder or a number of other psychiatric conditions. Dr. Large does not adequately address the possibility that claimant’s social issues are a result of a psychiatric condition or a mood disorder. Claimant’s social issues are secondary to her neuropsychological profile. “She clearly has a compromised brain.”

33. In a letter to claimant’s father dated June 16, 2011, Lori Burch wrote on behalf of the Service Agency to claimant’s father, denying claimant’s eligibility for regional center services. Ms. Burch wrote that claimant does not have a substantially disabling

developmental disability. The letter states that Dr. Large had diagnosed claimant with autism spectrum disorder with substantial impairment in three areas of major life activity, which does not meet the criteria for eligibility under a diagnosis of autistic disorder. The letter further states that Dr. Pontius concluded that claimant has an emotional disturbance suggestive of a mood or bipolar disorder, and that she does not have autistic disorder. (Ex. 2.)

Dr. Large's October 2011 Assessment

34. On September 27 and October 6, 2011, Dr. Large performed a second neuropsychological assessment of claimant at claimant's father's request; claimant's father believed claimant to be eligible for regional center services and sought guidance as to appropriate services and supports for claimant.

35. Dr. Large obtained a background update from claimant's father and claimant's significant other, Nadia P., reviewed additional records in claimant's file, made observations of claimant's behaviors, and administered the following diagnostic instruments, among others: Auditory Consonant Trigrams, Brown-Peterson Technique; Behavior Assessment Scale for Children, parent and self-report forms; California Verbal Learning Test, Second Edition (CVLT); Continuous Performance Task, Gordon Diagnostic systems; Controlled Oral Word Association, FAS & animal fluency; Vineland Adaptive Behavior Scales (Vineland-II); Wechsler Abbreviated Scale of Intelligence (WASI); Wide Range Achievement Test, 4th Edition (WRAT); and Wisconsin Card Sorting Test (WCST).

36. In her Neuropsychological Assessment report dated October 31, 2011, Dr. Large observed that there were few reported changes in claimant's behavior since the 2009 report.

[Claimant] continues to have marked problems with self-regulation and modulation of behavior and affect. In the last two years she has been through two residential-type settings, both of which she eloped from, and currently lives at home
[Claimant's father and Ms. P.] report persistent, pronounced problems with self-regulation manifest in myriad ways, including low frustration tolerance, angry and threatening outbursts, poor hygiene, lack of care for her living environment, inability to moderate her food intake, social isolation, and a near total lack of independence with regard to tasks such as grocery shopping, cleaning and other activities of daily living. Additionally, . . . [claimant] continues to demonstrate narrow interests, in anime and certain electronic games, and appears to have little motivation for any activity outside of these.

(Ex. 11.)

37. Dr. Large noted that claimant's participation in the school district's adult transition program was limited; "few demands are placed on her, in great part to avoid provoking hostile aggressive [behavior]" toward staff and other students. (Ex. 11.)

38. Dr. Large testified at hearing as follows.

- a. Dr. Large spent 12 hours with claimant over the course of two days, examining claimant's symptoms in light of the DSM IV TR autistic disorder diagnostic criteria. (Ex. 21.) Claimant's symptoms were most pronounced in social interaction, where she demonstrated all four of the required deficits. Claimant demonstrated impairment in communication as well. While findings were equivocal regarding language development and there was no echolalia, findings were quite clear that claimant cannot engage in reciprocal conversation. Finally, claimant engaged in some of the described restricted repetitive behavior. When claimant was younger, there was reporting of her lining things up, of her pacing and pounding on walls without any connection to any emotional function, indicating possible sensory or self-regulation needs, and of a history of difficulty with transitions. This constellation of symptoms supports a diagnosis of autistic disorder. This finding is consistent with what Dr. Large learned from claimant's father and from the DMH report.
- b. Autistic disorder best accounts for all of claimant's symptoms, with the exception of her dysphoria and her substantial learning disabilities. Claimant is not significantly cognitively impaired; mental retardation can be ruled out. She has some capacity to learn. She is not in the deficient range in reading and writing, although she is in the borderline to low-average range in math.

39. In questioning the validity of claimant's recent diagnoses of autism by Dr. Large in 2009 and 2011, the Service Agency relies on reports that claimant's early development was not delayed, and on its examiners' conclusions that claimant's behavioral and social issues and emotional dysregulation can be explained by psychological disorders, possibly resulting from heredity and prenatal exposure to drugs and alcohol. The Service Agency notes that claimant has been diagnosed with and should continue to be treated for those psychological disorders, that claimant is cunning and manipulative rather than naïve, a characteristic incompatible with autism, that her lack of friends is due to her emotional outbursts rather than to the effects of autism, and that claimant is not substantially disabled in more than two areas of major life activity.

40. The evidence adduced by claimant, however, that claimant satisfies the DSM IV TR criteria for autistic disorder, is persuasive. The multiple assessments and reports by Dr. Large, which taken together include a detailed analysis of claimant's developmental history and the use of diagnostic instruments relevant to the issues to be decided here, are more persuasive than the record reviews and evaluations performed on behalf of the Service

Agency. Evidence that claimant meets the DSM IV TR criteria for autism, while not corroborated by administration of such instruments as the ADOS and ADI-R, is nevertheless of sufficient weight to establish the relevant criteria for autistic disorder under the DSM IV TR. The efficacy of treatment claimant has received under various mental health diagnoses has been questioned; that claimant still demonstrates behaviors and deficits that fall within the definition of autistic disorder according to the DSM IV TR does not support a conclusion that services and supports designed to address those deficits as symptoms of autism are unwarranted. Even if symptoms of claimant's depression overlap with those of claimant's autism, the weight of the evidence establishes that claimant has autistic disorder, that autism has been a primary cause of claimant's substantial disability in three areas of major life activity since before claimant was 18 years old, and that the condition will continue indefinitely.

41. The evidence presented and the conclusions drawn from that evidence by both the Service Agency's evaluators and Dr. Large do not support a conclusion that claimant is eligible for regional center services under the fifth category. That issue need not be reached here, however, in light of the finding that claimant is eligible for services due to her diagnosis of autistic disorder.

LEGAL CONCLUSIONS

1. Cause exists to grant claimant's request for regional center services, as set forth in Factual Findings 1 through 41, and Legal Conclusions 2 through 4.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, § 115.)

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for [him]." (Welf. & Inst. Code, § 4512, subd. (a).) "Developmental disability" is defined to include mental retardation, cerebral palsy, epilepsy, 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." (*Id.*)

4. Claimant established by a preponderance of the evidence that she has a qualifying diagnosis of autism. (Factual Findings 4-40.)

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ORDER

Claimant Kathryn F.'s appeal is granted; the Regional Center of Orange County's decision denying claimant's request for regional center services is reversed.

DATE: February __, 2012

HOWARD W. COHEN
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.