

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DEONTA J.,

Claimant,

OAH No. 2011071054

and

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Service Agency.

**DECISION**

Administrative Law Judge Ralph B. Dash heard this matter on January 24, 2012 at Lancaster, California.

Brian Allen, Special Needs Consultant, represented Deonta J. (Claimant), whose cousin Yvette, his adoptive mother, was present at the hearing on his behalf.

Rutha Janka, Contract Administrator, represented North Los Angeles County Regional Center (Regional Center or Service Agency).

**ISSUE**

The parties agreed the issue to be resolved is whether Claimant is eligible for services from the Service Agency under the "Fifth Category."

**FACTUAL FINDINGS**

1. Claimant is 15 years old (date of birth September 12, 1996) who seeks Regional Center services based on severe impairments in his adaptive functioning. Regional Center does not dispute that Claimant has severe impairments. However, Regional Center disputes that Claimant is eligible for services because he does not have a developmental disability as defined by law.

2. Claimant has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). He receives special education programming due to this diagnosis. Claimant resides with his maternal cousin and guardian Yvette whom he refers to as “mom.” Claimant has resided with Yvette since he was 2 months old. Yvette is highly concerned with recent changes in Claimant. He was “doing great in school” but in the last year his grades have dropped significantly (from a 3.5 GPA) and he is now failing classes. According to Yvette, as set forth in the Social Assessment prepared by Regional Center on April 5, 2011, (Exhibit 6):

Claimant appears to be “unaware of consequences and was expelled from the bus after exposing himself to other kids. He did not seem to think anything was wrong with this behavior. A neighbor caught Claimant peeking at her 17 year-old daughter through her window in the mornings while she was getting ready for school. Though told about the serious consequences of this behavior, Claimant has been caught again by Yvette and another time by her adult son. He sneaks out of the house during the night and recently tapped on the neighbor's window at 2 a.m. and motioned at her to come out. This neighbor is now terrified of Claimant. No matter the punishment given, Claimant continues with these behaviors. In the last year Claimant's personal hygiene has declined as well. He has stolen Yvette's car twice and she now sleeps with her bedroom door locked and a chair up against it to protect herself and her possessions.

3. Claimant is able to complete all personal hygiene tasks independently but lately he puts on whatever clothes he finds and doesn't care if they are clean or dirty. Claimant reportedly gives away all his new clothes and wears things that are too small for him. He can manage clothing fasteners, eat using all utensils, and is a good eater. Lately he has begun hoarding food and food is disappearing from the home. Claimant does not pay attention when crossing a street and talks to strangers, approaches unfamiliar animals and opens the front door without checking who is there. He safely handles hot and electrical items. He lets Yvette know when he is hurt or feeling ill. Claimant refuses to do household chores and never really has done them. When he does make his bed it is sloppy. He cooks easy things like scrambled eggs on the stove and can independently use a microwave. Claimant is not helpful when out shopping; instead he wanders away. He knows how to drive a car though he does not have a license. He knows the value of money very well and can give and receive correct change and knows how much is due back before the cashier even figures it out. Claimant knows how to use the ATM. He talks on the phone to friends and can dial a local call. He gives verbal phone messages and knows when it is appropriate to call 911. Claimant can order from a menu independently.

4. Claimant speaks in complete sentences and can engage in conversation but lately Yvette notices him answering off-topic or staring off. He has good speech clarity and has never required speech therapy. Claimant is able to relate current

experiences but he needs reminders to recall past ones. He can comprehend books at a slightly younger age level and enjoys and understands movie plots. Claimant best follows one-step directions.

5. Claimant does not have friends over to the house but sneaks out to meet them. He is described as being a follower and is easily led by others. He shows no awareness of other people's emotions and does not pick up on social cues. When he was younger Claimant required adult guidance in order to share and turn-take and he never played imaginatively. He played appropriately with toys and was never obsessed with certain things or themes. Claimant has always shown good eye contact. He used to show spontaneous affection only towards Yvette but now shows none. Claimant went to the Boys and Girls Club in Los Angeles where they used to live but now doesn't want to return. He had numerous suspensions while there due to his disruptive behaviors. During social gatherings Claimant becomes very disruptive and destructive and he is not allowed back in some people's homes. His behaviors have also cost Yvette a relationship. Claimant sneaks out and does what he wants to do on his own and never wants to be with family. Claimant has never been physically aggressive towards anyone but lately his tone of voice becomes aggressive and he slams down chairs and walks out at home and at school. He also has begun talking back to Yvette. This occurs when she makes him stay with her to prevent him from sneaking out. He is usually resistive to commands. Within the past year, Claimant stated that he wished he were dead but has never attempted to harm himself. He has caused property damage while sneaking out causing Yvette to replace several window screens more than once. Claimant rocks and taps in class which appears to calm him and help his comprehension. He is not sensitive to sound or touch but becomes confused and wanders when in crowds. Claimant is able to "go with the flow" in regards to change.

6. Two psychological evaluations were placed in Evidence. Exhibit 8 is an evaluation dated June 18, 2011, performed by Regional Center psychologist Ann Walker, Ph.D. Exhibit 9 is an evaluation dated August 30, 2011, performed by independent psychologist Leslie B. Rosen, Ph.D. Both psychologists reviewed records, interviewed Claimant and Yvette, and administered tests to Claimant. Neither psychologist concluded Claimant has a developmental disability. Both psychologists were concerned about Claimant's psychiatric problems and escalating drug use. The following is an excerpt from Dr. Walker's report which summarizes her findings and diagnostic impressions:<sup>1</sup>

Test Behavior:

In the test room, [Claimant] responded impulsively but with encouragement was able to think through his responses. He worked diligently, seemed interested in test materials, and was a hard worker.

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<sup>1</sup> All quoted material substitutes the title "Claimant" in lieu of Claimant's given name.

[¶] . . . [¶]

#### Cognitive Intellectual Skills:

On this administration of the WISC-IV, Claimant's immediate verbal memory was in the significantly above average or gifted range. Claimant's visual reasoning and speed in a time visual motor coordination task was well within the normal range. He showed significant weakness in verbal comprehension skills. In this area of weakness, his abilities were in the borderline range. There was a 41-point difference between indices, which indicates that the Full Scale IQ is not a valid measure of overall ability. Instead, Claimant shows areas of dramatic strength and dramatic weakness.

#### Academic Skills

On this administration of the WRAT-4, Claimant's word reading skills were at a 10.8 grade level. Math computation skills were at a 5.4 grade level. Claimant is presently in the 9th grade. His performance on the WRAT-4 yielded scale scores in the normal range.

#### Communication Skills:

On this administration of the Vineland II, Claimant's communication skills yielded a domain standard score in the borderline range. Claimant knows his address. During the Psychological Evaluation, he was able to read at a 10th grade level. He is able to engage in conversation with his cousin.

#### Social Adaptive Skills:

On this administration of the Vineland II, Claimant's self-help skills yielded a domain standard score in the borderline range. Claimant's cousin reports that he does dress and bathe independently but his cousin has to fight with him to get him to take a shower. She gives him medication that he needs and takes care of a minor cut. Claimant's social skills yielded a domain standard score in the borderline range. Claimant reported that he has many friends. His cousin disagreed with that and reported that he buys friends and does not have any true friends. Claimant enjoys sports like basketball and was able to engage the examiner in a lively conversation about basketball.

### Behavioral Affective Functioning:

The ADOS, Module 3 was completed with Claimant and this yielded communication and reciprocal social interaction skills were in the non-autistic range.

Claimant showed no stereotypic use of words. He was able to report events without probes and was able to report on routine and non-routine events. He was able to engage in reciprocal conversation of at least 4-element sequence with the examiner. Some limited gestures were observed. Claimant was observed using eye contact to modulate social interaction. Facial expressions conveyed his feelings and he showed a variety of facial expressions during the evaluation. He showed no insight into his role in relationships. Social overtures were limited to his personal needs. Claimant's social response was appropriate. He formed a cooperative relaxed comfortable rapport with the examiner and showed good reciprocal social communication throughout the evaluation.

The ADI-R was completed by interviewing Claimant's legal guardian, his cousin. This yielded reciprocal social interaction, communication and patterns of interest in the non-autistic range.

[REDACTED] . . . [REDACTED]

The GARS-2 was completed by Claimant's cousin. This yielded an Autism Index at 4%.

[REDACTED] . . . [REDACTED]

### Diagnostic Impressions (DSM-IV TR):

Axis I: 314.01 Attention Deficit-Hyperactivity Disorder, Combined Type  
315.9 Learning Disorder NOS (Weakness in Verbal Comprehension Skills)  
305.2 Cannabis Abuse

Axis II: No Diagnosis

### Summary and Conclusions:

Claimant is a 14-year and 9 month old young man who continues to meet diagnostic criteria for the diagnosis of Attention Deficit-Hyperactivity Disorder. Claimant has a brief attention span. He is

impulsive. It is difficult for him to focus. He can have boundless energy and can be difficult to restrain. Claimant also meets diagnostic criteria for the diagnosis of Marijuana Abuse. Claimant is smoking marijuana every single day according to his cousin. Claimant also meets diagnostic criteria for the diagnosis of a Learning Disorder involving weakness in verbal comprehension skills. His performance on the WISC-IV was consistent with a Learning Disorder involving weakness in verbal comprehension skills.

[¶] . . . [¶]

Claimant does not meet diagnostic criteria for the diagnosis of Autistic Disorder and tested in the non-autistic range in all areas on the ADOS and the ADI-R and obtained an Autism Index at 4% on the GARS-2, completed independently by Claimant's legal guardian. Claimant shows many behaviors inconsistent with the diagnosis of Autistic Disorder.

Claimant performed in the normal range in his visual reasoning and speed in a time visual motor coordination task. Immediate verbal memory was significantly above average and verbal comprehension skills were in the borderline range. Claimant's academic skills yielded scale scores in the normal range. Word reading skills were at a 10.8 grade level and math computation skills at a 5.4 grade level. Claimant's communication, self-help and social skills were in the borderline range.

#### Recommendations:

Claimant should continue in special education support in school. He might be considered for an AB 3632 Evaluation to help him access school mental health services, such as counseling and anger management training, since he is having particular difficulty with impulsivity and disruptive behavior at school. Appropriate special education services should be determined by the school district in collaboration with Claimant's legal guardian. Claimant should be referred to his pediatrician to determine whether medication might be helpful in treating the Attention Deficit-Hyperactivity Disorder. Claimant should be referred for drug rehabilitation and counseling to address the marijuana abuse. Claimant should continue in psychotherapy and group therapy until he has completed his therapy. Claimant's cousin might also appreciate an opportunity to receive some counseling to discuss ways to offer a more structured environment in the home to better manage Claimant at home.

7. The following is an excerpt from Dr. Rosen's report summarizing, in part her impressions and recommendations:

## **DIAGNOSTIC IMPRESSIONS:**

Axis I 300.4 Dysthymic Disorder, Early Onset  
R/O Schizoaffective Disorder, Depressive Type  
314.01 Attention Deficit/Hyperactivity Disorder, Combined  
Type by HX  
312.8 Conduct Disorder, Adolescent-Onset Type, Mild  
305.20 Cannabis Abuse

Axis II Diagnosis deferred on Axis II

## **SUMMARY AND RECOMMENDATIONS:**

Claimant is an almost 15-year-old teenager who was referred by his counselor due to academic difficulties, behavior difficulties, legal problems, emotional difficulties, social skills difficulties, suspected drug abuse, and sister's death. Because Claimant was not administered sufficient subtests to derive a FSIQ, this evaluation focused on more narrow domains of cognitive functioning. Furthermore, Claimant's general working memory abilities are in the Borderline range (WMI = 74), and his general processing speed abilities are in the Borderline range (PSI = 78). His NNAT was in the low average range. Claimant demonstrated personal strength in Basic Reading on the WLAT. He demonstrated relatively weak skills in Mathematics Reasoning on the WIAT. His adaptive and coping skills were extremely low. Although his academic skills need attention, his apparent escalating use of substance from marijuana to crystal meth needs to be addressed first. His guardian should be encouraged to find effective rehabilitation for Claimant as she has been doing. Examiner hypothesizes that Claimant's symptoms fit someone who is self medicating to blunt the escalating symptoms needed for a diagnosis of Schizoaffective Disorder, Depressive Type. There is a history of schizophrenia in the family, so Claimant needs to be supervised and observed closely. A diagnosis of Dysthymia was also given as Claimant appears to have a long history of depressed mood which may seem normal to him and his family members. Claimant is an adolescent at risk for suicidal ideation and possible attempts. He needs to be monitored daily. The violent death of his sister appears to have escalated the depth of his symptoms and added drug use. His legal problems indicate to examiner that Claimant does meet criteria for Conduct Disorder as well. He is currently hurting and needs reassurance that people would care if he died and that his life can make a difference to himself and others. His defiant pessimism needs to be gently challenged so that he can move off of his all or nothing categorical thinking. He needs a medication consultation when his drug use is contained.

The following recommendations and suggestions are made with the above goals in mind as well as her continued cognitive, emotional and social development.

1. First and foremost a suitable substance abuse program should be found and Claimant enrolled.

[Twelve additional recommendations follow.]

## LEGAL CONCLUSIONS

### APPLICABLE LAW

1. Various statutes and regulations relating to eligibility apply to Claimant's request for services. Welfare and Institutions Code section 4512, subdivision (a) defines "developmental disability" as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes 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 mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

2. As relevant here, California Code of Regulations, title 17 (CCR), section 54000, defines "developmental disability" as a disability attributable to mental retardation or other conditions similar to mental retardation that require treatment similar to that required for mentally retarded individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

3. These three exclusions from the definition of "developmental disability" under CCR section 54000 are further defined therein. Impaired intellectual or social functioning which originated as a result of a psychiatric disorder, if it was the individual's sole disorder, would not be considered a developmental disability. "Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have been seriously impaired as an integral manifestation of the disorder."

4. Nor would an individual be considered developmentally disabled whose only condition was a learning disability (a significant discrepancy between estimated cognitive potential and actual level of educational performance) which is not "the result of generalized mental retardation, educational or psycho-social deprivation, [or]

psychiatric disorder . . . .” Also excluded are solely physical conditions such as faulty development, not associated with a neurological impairment, which results in a need for treatment similar to that required for mental retardation.

5. CCR section 54001 provides:

(a) ‘Substantial handicap’ [as required to find a “developmental disability” under CCR § 54000] means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.<sup>2</sup>

(b) Since an individual’s cognitive and/or social functioning are many-faceted, the existence of a major impairment shall be determined through an assessment which shall address 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;
- (7) Economic self-sufficiency

6. In CCR section 54002, the term “cognitive” is defined as “the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience.”

7. Welfare and Institutions Code section 4512 does not define what constitutes either a condition which is closely related to mental retardation, or one which requires treatment similar to that required for mentally retarded individuals. Whereas the first four categories of eligibility are very specific (e.g., autism or cerebral palsy), the disabling conditions under this residual, fifth category are intentionally broad to encompass unspecified conditions and disorders. There are many persons and groups with sub-average functioning and impaired adaptive behavior; however, a service agency does not have a duty to serve all of them. The fifth category does not provide unlimited access to all persons with some form of learning or behavioral disability.

8. While the legislature did not define this category, it did require that the condition be “closely related” (W&I § 4512) or “similar” (CCR § 54000) to mental retardation. The definitive characteristics of mental retardation are the significant degree of cognitive and adaptive deficits. Thus, to be closely related or similar to mental

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<sup>2</sup> For some reason, the phrase used in Welfare and Institutions Code section 4512 is “substantial disability,” not “substantial handicap,” as used in the Regulations. There are no significant differences in the phrases.

retardation, there must be a qualitative or functional correlation of cognitive and adaptive deficits which render that individual's disability like that of a person with mental retardation. This, however, is not a simple and strict replication of all of the cognitive and adaptive qualities or criteria to find eligibility due to mental retardation (e.g., reliance on IQ scores); otherwise, this fifth category would be redundant. Eligibility under this category requires analysis of the quality of claimant's cognitive and adaptive functioning and whether the effect on his performance renders him like a person with mental retardation.

9. To have a condition which requires treatment similar to that provided to mentally retarded persons is not a simple exercise of enumerating the services provided to such persons and seeing if Claimant would benefit. Many people could benefit from the types of services offered by regional centers, such as counseling, vocational training or living skills training. The criterion is not whether someone would benefit. Rather, it is whether someone's condition requires such treatment.

10. The statutory and regulatory definitions of "developmental disability" (W&I § 4512 and CCR § 54000) exclude conditions that are solely physical in nature, solely psychiatric disorders or solely learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability and a psychiatric disorder, physical disorder, or learning disability, would still be eligible for services. However, someone whose conditions are only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability, would not be eligible.

11. Claimant's diagnoses have consistently included psychiatric problems, drug abuse and learning disabilities, none of which qualify him for regional center services. He has never been diagnosed as having epilepsy, cerebral palsy, autism or

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mental retardation. No expert evidence was presented whereby Claimant could be found eligible under the “fifth category.” The present state of the evidence is not sufficient to establish Claimant’s eligibility for services from the Regional Center.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant’s appeal of Regional Center’s determination that he is not eligible for services is denied.

DATED: \_\_\_\_\_

\_\_\_\_\_  
RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.