

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

YARELI C.,

Claimant,

and

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Service Agency.

OAH No. 2011080834

DECISION

This matter came on for regularly scheduled hearing on January 25 and February 16, 2012, at Santa Clarita, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. The North Los Angeles County Regional Center (Service Agency) was represented by Rhonda Campbell, Contract Officer. Claimant Yareli C. was represented by her mother, Leticia B.<sup>1</sup>

Evidence was received by documents and testimony. The record was closed and the matter was submitted for decision on February 16, 2012.

ISSUE

The parties agreed that the following issue is to be resolved:

Is Claimant eligible to receive services from the Service Agency?

FACTUAL FINDINGS

1. Claimant was born in June 2008 and is three years old. Claimant has a diagnosis of cerebral palsy. In December 2008 Claimant began receiving Early Start services from the Service Agency based upon developmental delays. As Claimant approached the age of three

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<sup>1</sup> Initials are used to maintain privacy for Claimant and her family.

and the end to eligibility for Early Start services, she was evaluated for eligibility under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welfare and Institutions Code section 4500 et seq.)

2. In a letter dated June 22, 2011, the Service Agency denied eligibility, asserting that Claimant's diagnoses were such that she is not eligible for services.

3. Claimant's mother submitted a request for Fair Hearing dated August 9, 2011, and this hearing ensued.

4. Various statutes and regulations relating to eligibility may apply to Claimant's request for services. As applicable to this case, Welfare and Institutions Code<sup>2</sup> section 4512, subdivision (a), states: " 'Developmental disability' means 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. . . . [T]his term shall include mental retardation, cerebral palsy, epilepsy and 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."

As relevant here, California Code of Regulations, title 17 (CCR), section 54000 defines "developmental disability" as a disability attributable to one of the five eligible conditions that originates before age 18, is likely to continue indefinitely, and constitutes a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

5. This statute and regulation include the requirement that the condition constitutes a substantial disability or substantial handicap. In Code section 4512, subdivision (l), "substantial disability" is defined to mean "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by the regional center, as appropriate to the age of the person:

- (1) Self-care;
- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency."

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code.

The definition of substantial disability found in CCR section 54001 adds that it is a condition “which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.” 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.”

6. In summary, Claimant’s mother contends that Claimant is eligible for services because she suffers from autism and cerebral palsy which are substantial disabilities. The Service Agency contends that Claimant has been diagnosed with cerebral palsy but is not substantially disabled by it, and that she may suffer other conditions, such as Mixed Receptive Expressive Language, but does not have a diagnosis of autism and is not eligible for services.

7. A base level understanding of autism will help place in context the evidence of Claimant’s behaviors, test scores, evaluations and diagnoses.

The Diagnostic and Statistical Manual of Mental Disorders (4th edition, Text Revision, 2000, American Psychiatric Association; also known as DSM-IV-TR) is a well respected and generally accepted manual listing the diagnostic criteria and discussing the identifying factors of most known mental disorders. The manual uses a number system for the different disorders which is accepted by most medical and psychotherapeutic professionals (and insurance companies) as a shorthand method to designate the disorders that are more specifically described in the manual.

The DSM-IV-TR contains information on the diagnoses of autism<sup>3</sup> and Pervasive Developmental Disorder Not Otherwise Specified (PDDNOS) that can assist in answering the eligibility issue in this case. The section includes autism as one of several Pervasive Developmental Disorders, which also includes Asperger’s Syndrome, Rhett’s Disorder, Childhood Disintegrative Disorder, and PDDNOS. It contains a list of diagnostic criteria for autism. As noted in more detail below, if a person exhibits some of the features of these Pervasive Developmental Disorders but does not exhibit all of the features necessary to support a specific diagnosis of Autistic Disorder, Asperger’s Syndrome, Rhett’s Disorder, or Childhood Disintegrative Disorder, a diagnosis of PDDNOS may be made.

8. More specifically, according to the DSM-IV-TR, the features of autism are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. It can differ greatly from person to person. There is no definitive test for it; rather, the list of symptoms and

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<sup>3</sup> The statute listing eligible conditions uses the word autism (see Factual Finding 4), while the DSM-IV-TR uses the phrase autistic disorder. For purposes of this Decision, they are interchangeable.

behaviors is an attempt to collect and categorize the known features into a workable diagnostic reference tool. The 12 listed symptoms and behaviors are organized into three categories. At least six symptoms and behaviors must be present to support a diagnosis of autism. Category A1 is referred to as qualitative impairments in social interaction, which must be gross and sustained; category A2 is referred to as qualitative impairments in communication, which must be marked and sustained and affect both verbal and nonverbal skills; and category A3 is referred to as restricted, repetitive and stereotyped patterns of behavior, interests, and activities. Further, some specifically noted delays or abnormal functions must occur before age three and the disturbance must not be better accounted for by another diagnosis.

9. According to the DSM-IV-TR, the diagnosis of PDDNOS is appropriate when some features are present that are similar to autism, but the more specific diagnoses cannot be made of autism or other Pervasive Developmental Disorders. The diagnosis of PDDNOS is appropriate when “there is a severe and pervasive impairment in the development of reciprocal social interaction associated with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities, but the criteria are not met for a specific Pervasive Developmental Disorder, Schizophrenia, Schizotypal Personality Disorder, or Avoidant Personality Disorder. For example, this category includes ‘atypical autism’—presentations that do not meet the criteria for Autistic Disorder because of late age at onset, atypical symptomatology, or subthreshold symptomatology, or all of these.”

10. The DSM-IV-TR contains information on the diagnosis of communication disorders such as Mixed Receptive-Expressive Language Disorder which can assist in answering the eligibility issue in this case. This language disorder has two main components: receptive language difficulties include difficulty understanding words, sentences or particular types of sentences, while expressive language disorder is an inability to use words appropriately to convey one’s thoughts, such as limited vocabulary, errors in tense, and/or using improper words, in a way that interferes with academic or occupational achievement or with social communication. There can be symptoms of limited vocabulary and simplified grammar, limited varieties of sentences or omissions of words in sentences. Nonlinguistic functioning, as measured by the performance portions of intelligence tests, and language comprehension skills are usually within normal limits. The disorder is usually found and measured by using standardized tests. In the section on differential diagnosis (differentiating Mixed Receptive-Expressive Language Disorder from other disorders), it is noted in the DSM-IV-TR that the language disorder is not diagnosed if the criteria are met to diagnose Autistic Disorder.

11. The Service Agency agrees with diagnosis of cerebral palsy given to Claimant. More specifically, her condition was described by her treating neurologist, Dean Sarco, M.D., as mild right hemiparesis. Claimant’s medical and school records and progress reports of physical and occupational therapy were reviewed for the Service Agency by Margaret Swaine, M.D., who credibly testified that the records supported the conclusion that Claimant’s condition was mild and that she did not need adaptive equipment such as a walker or braces. Further, although some slight delays are still present in some of Claimant’s functional skills, she had met

goals in other functional areas. Dr. Swaine was aware of concerns stated by Claimant's mother and included in several reports, such as Claimant's impulsivity, lack of danger awareness, tantrums and need for constant supervision. In conclusion, Dr. Swaine's opinion was that Claimant was functional and there was no evidence that Claimant had a neurological impairment that would impede her progress. Dr. Swain did not believe that Claimant's cerebral palsy constituted a substantial disability under the language of the Code or the regulations.

12a. On behalf of the Service Agency, Heike Ballmaeir, Psy.D., reviewed the available records for purposes of assessing whether Claimant could be properly diagnosed with autism. Of particular significance are the following reports.

12b. Anna Levi, Psy.D., performed a psychological evaluation on April 3, 2011, as part of the transition from Early Start as Claimant approached her third birthday. By use of various appropriate assessment tools, Dr. Levi found that Claimant demonstrated overall average intellectual abilities and her adaptive skills were high borderline, supporting the conclusion that Claimant was not mentally retarded. Two autism screening tools were used: the Autism Diagnostic Observation Schedule (ADOS), where the clinician engages in an age-appropriate set of interactions with Claimant, and the Autism Diagnostic Interview-Revised (ADI-R), where the clinician obtains answers to questions from knowledgeable sources, here Claimant's mother and father. The results in both tests were below the autism cutoff, indicating that no diagnosis of autism would be supported. In her report (Exhibit 9), Dr. Levi noted some areas where she found some of the behaviors or symptoms of autism from the DSM-IV-TR, but only one that she described as being a qualitative impairment as required in the DSM-IV-TR. Dr. Levi concluded there was no diagnosis under DSM-IV-TR criteria.

12c. A Preschool Assessment Team Report was prepared by Claimant's school district based on testing on April 15, 2011 (Exhibit 19). Although several significant characteristics of autism were noted, Claimant was found eligible for special education services based only on her speech and language impairment, with concern also expressed about her short attention span, impulsivity and distractibility. She was not found eligible under the category of autistic-like behaviors which, under California Code of Regulations, title 5, section 3030, subdivision (g), requires some, but not all, of the criteria under the DSM-IV-TR to be present.

12d. The school district's Individualized Education Plan (IEP) lists Claimant's eligibility for special education services as based on her speech or language impairment with no secondary eligibility noted.

12e. After an informal meeting between the Service Agency and Claimant's mother, it was agreed that a school observation would be performed. This observation was by Ann Walker, Ph.D., on October 11, 2011. Dr. Walker reviewed other reports and records and administered tests, including the ADI-R and the Gilliam Autism Rating Scale-2<sup>nd</sup> Edition (GARS-2), both with Claimant's teacher as the information source. Dr. Walker noted some areas where she found some of the behaviors or symptoms of autism from the DSM-IV-TR, but

not the number or severity as required to diagnosis autism under the DSM-IV-TR. Based on her record review, Dr. Walker made a diagnosis of Mixed Receptive Expressive Language Disorder, but no diagnosis of autism. In her testimony, Dr. Ballmaier added that many of the behaviors listed in the DSM-IV-TR may have been observed, but they did not rise to the required level of being a qualitative impairment, as required by the DSM-IV-TR.

13. Claimant's mother also testified, including the onset of Claimant's symptoms and behaviors, the effects these have had on the family, and the extraordinary efforts she has made to obtain appropriate services for her. She expressed concerns over Claimant's tantrums, inappropriate interactions with other children, uncontrollable behaviors and lack of self-care skills and safety awareness. Without her supervision, she stated that Claimant would engage in disruptive and unsafe behaviors.

14. The preponderance of the evidence submitted supports the Service Agency's decision to deny eligibility for Claimant to receive services. Claimant has not established that she is eligible to receive services.

#### CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law and determination of issues:

1. Throughout the applicable statutes and regulations (Code sections 4700 - 4716, and CCR sections 50900 - 50964), the state level fair hearing is referred to as an appeal of the regional center's decision. Particularly in this instance, where Claimant seeks to establish her eligibility for services, the burden is on the appealing Claimant to demonstrate that the Service Agency's decision is incorrect.

2 To answer the question of Claimant's eligibility requires a review of the applicable statutes and regulations and the relationship of the evidence to them. Several requirements must be met. Code section 4512 lists specific categories for possible eligibility, as well as the requirement that the disability constitute a substantial disability for the individual, which is then defined. Similar requirements are found in the CCR. (See Factual Findings 4 and 5.)

3. There have been numerous tests, evaluations, assessments, observations and reports relating to Claimant. Numerous factors have been identified and discussed which may legitimately play a part in the determination of whether Claimant suffers from a developmental disability. However, no appropriately trained and experienced professional has offered the opinion that Claimant has an eligible condition and that she is substantially disabled as a result. There was no evidence that these assessments were performed improperly or that the diagnoses made by these professionals were incorrect. Not only was there no professional's diagnosis of

autism, there was no diagnosis made under the more relaxed criteria of PDDNOS.

4. The DSM-IV-TR notes that it was developed for use in clinical, educational and research settings and is designed for use by those with appropriate training and experience, including a specialized body of knowledge and clinical skills. It should not be applied mechanically or in a cookbook fashion, and the diagnostic criteria “are meant to serve as guidelines to be informed by clinical judgment,” which might be used to justify a diagnosis even if all criteria are not met, as long as the symptoms are close, persistent and severe. It also stresses the importance of collecting data such that it is valid and sufficient to aid in making any diagnosis. The symptoms and behaviors listed must be evaluated by those who, by their training and experience, are qualified to determine whether those behaviors are clinically significant and would or would not support the diagnosis.

5. In her testimony and in her questioning of Dr. Ballmaeir and Dr. Swaine, Claimant’s mother referred to reports and assessments that included references to Claimant’s cerebral palsy and to her behaviors and symptoms as they relate to the requirements for a diagnosis of autism. However, there was insufficient evidence to conclude that Claimant is substantially disabled, as defined above, by her cerebral palsy. As to behaviors required to make a diagnosis of autism, some professionals noted that some of those behaviors were present, but often not to the level of being “gross and sustained,” meaning that it is obvious and noticeable over time, and would therefore not be considered as qualitative impairments.

6. The evidence supports the determination by the Service Agency that Claimant is not eligible for services. (See Factual Findings 1 through 14.)

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Claimant has not established her eligibility for services. The Claimant’s appeal of the Service Agency’s determination that she is not eligible for services from the Service Agency is denied.

DATED: February 24, 2012.

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DAVID B. ROSENMAN  
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.