

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RUBEN M.,

Claimant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. 2012010185

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Modesto, California, on February 29, 2012.

Claimant's mother (Mother) represented claimant. Maritza Castellanos, Spanish Language Interpreter, translated for Mother.

Anthony Hill, Assistant Director of Case Management, represented the service agency, Valley Mountain Regional Center (VMRC).

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

ISSUE

Does claimant continue to be eligible for regional center services because he suffers from mental retardation or autism?

FACTUAL FINDINGS

1. On November 29, 2011, VMRC issued a Notification of Proposed Action (NOPA) to claimant and his parents. The NOPA advised claimant and his family that an

interdisciplinary team composed of VMRC's clinical psychologist, physician, and service coordinator reviewed medical, psychological, and educational records, and determined that claimant was no longer eligible for VMRC supports and services because he does not have a substantial handicapping condition as defined by the Lanterman Act.

2. On December 14, 2011, claimant, through his Mother, filed a Request for Fair Hearing, appealing the service agency's determination that claimant was not eligible for services. Mother also executed a Waiver of Time Set by Law for Lanterman Act Fair Hearing and Decision, in order to facilitate claimant's request for an informal meeting in the Request for Fair Hearing.

3. On January 30, 2012, the Office of Administrative Hearings issued a Notice of Hearing, setting the hearing for February 23, 2012.

4. On February 23, 2012, the parties agreed to continue the hearing to February 29, 2012.

5. Claimant is a 13-year-old boy who lives with his parents and twin brother in Newman, California. He attends school in the Newman-Crows Landing School District, where he receives special education services. He has received services and supports from VMRC including respite services, medication monitoring through VMRC's Telemedicine Clinic, and interpreter services for his parents. He had previously been determined eligible for services from VMRC as a person who suffers from mental retardation.

6. Under the Lanterman Act, VMRC accepts responsibility for providing services and supports for persons with developmental disabilities. 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)).

On October 5, 2011, VMRC's interdisciplinary team reviewed claimant's school and medical records and determined he was no longer eligible for services from VMRC. Mother believes claimant is eligible for regional center services because he may have autism. She does not contend that claimant is eligible for regional center services under any other category of disability.

Assessment Records and Testimony

7. Barbara Johnson, Psy.D., VMRC's Clinical Psychologist, testified at the hearing. In her role as Clinical Psychologist, Dr. Johnson performs evaluations to assist VMRC in determining whether individuals who are applying for service are eligible under the Lanterman Act. She also reviews records to help the interdisciplinary team determine ongoing

eligibility for services. Prior to obtaining her doctorate in psychology, Dr. Johnson worked for many years as a clinician at a county mental health agency. Dr. Johnson stated that, although claimant had been found eligible to receive services from VMRC in 2004 based on a diagnosis of mild mental retardation, current school records and assessments of claimant do not support that diagnosis. She opined that claimant is a person with low average intelligence, who suffers from a speech and language impairment, a learning disability, and anxiety, but does not suffer from a condition that would make him eligible for services from VMRC under the Lanterman Act.

8. On December 2, 2008, when claimant was 10 years, three months old, he was evaluated by Timothy A. Ribota, Ed. S., School Psychologist, at Newman-Crows Landing Unified School District. Mr. Ribota administered the Universal Nonverbal Intelligence Test (UNIT) and found claimant to have a Full Scale IQ of 82, a score in the Low Average range. When Mr. Ribota compared claimant's academic achievement with his cognitive ability, he determined a significant discrepancy between achievement and ability, and diagnosed claimant as a person with a learning disability. However, the December 2008 assessment did not find claimant to be a person with mental retardation. In order to be diagnosed with mental retardation, a person would have a Full Scale IQ at or below 70.

In December 2011, when claimant was 13 years, three months old, he was evaluated by Linette Delgado, School Psychologist at Newman-Crows Landing Unified School District. Ms. Delgado's assessment yielded similar results to that completed by Mr. Ribota three years earlier. Ms. Delgado again concluded that claimant has a learning disability and not mental retardation.

Peggy Hodgson, MA, CCC-SLP, Newman-Crows Landing speech and language pathologist, assessed claimant's speech and language needs in December 2011. Ms. Hodgson's assessment showed claimant had significant delays in his receptive and expressive language skills. In contrast, she found that claimant's articulation, fluency, and voice were adequate for claimant's chronological age. Ms. Hodgson recommended that claimant continue to receive speech and language therapy as part of his special education program.

Claimant's Individualized Education Program (IEP) team found claimant to be eligible for special education under the eligibility categories of Specific Learning Disability and Speech and Language Impairment. The IEP team did not find claimant eligible under the category of mental retardation (also known as intellectual disability).

9. Claimant receives medication monitoring and psychiatric services through VMRC's Telemedicine Clinic. He can be quite anxious at times and has a diagnosis of obsessive-compulsive disorder and social phobia disorder. Claimant's treating psychiatrist has prescribed various psychiatric medications to help alleviate claimant's symptoms. Mother testified that, while the medications seem to help, she needs ongoing support to ensure that claimant receives appropriate treatment for his mental health issues.

Mother stated that claimant may not necessarily be eligible for services under the eligibility category of mental retardation, but she opined that he might have autism. She submitted some information she had received from Stanford University. Stanford is completing a California Autism Twin Study (CATS), however, claimant did not go to his appointment in April 2011, and did not participate in the study himself. There was no evidence provided at hearing that claimant had been diagnosed with autism. There was no evidence provided that any of the physicians, psychologists, or educators who have worked with claimant suspect he has autism. Mother is also very concerned about losing the medication monitoring services she has received from VMRC. Although the medication claimant is taking seems to help him, she is not certain the correct medication has been identified and she would like to keep the service for her son.

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. A preponderance of the evidence supports VMRC’s finding that claimant does not have mental retardation. Although claimant’s Mother opined that claimant might have autism, there was no evidence to support a finding that claimant has autism. Claimant suffers from a learning disability and he has been diagnosed with psychiatric disorders. Neither of these disabilities qualify a person to receive regional center services.

4. No evidence was offered that claimant suffers from the other conditions that qualify a person for regional center services under the Lanterman Act. Specifically, claimant did not claim he had cerebral palsy, epilepsy, or a condition closely related to mental retardation or requiring treatment similar to that required by people with mental retardation.

ORDER

Claimant's appeal from VMRC's decision that claimant is not eligible for regional center supports and services under the Lanterman Act is DENIED.

DATED: March 12, 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).)