

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH No. 2012120770

PRESTON G.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on May 8, 2013, in Bakersfield, California.

Preston G., claimant, was represented by his mother.

Jeffrey Popkin represented the Kern Regional Center (regional center).

Evidence was received and the matter was submitted for decision.

ISSUE

Did the regional center properly determine that claimant is no longer eligible for regional center services?

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy who had been found to be eligible for regional center services in 2009 based on a diagnosis of Pervasive Developmental Disorder, Not Otherwise Specified (PDD, NOS).

2. In 2009, Allison Little, Ph.D., evaluated claimant and offered a diagnosis of PDD, NOS based on the results of the ADOS – Module I. In her report, Dr. Little stated that claimant “reveals a qualitative impairment in social interactions with deficits in social and emotional reciprocity. He also reveals an impairment in his communication and is significantly delayed in the development of spoken language compared to same age peers. The client also reveals restricted, repetitive and stereotyped patterns of behaviors, interests and activities, with a preoccupation in these areas that are abnormal in intensity.” In utilizing the ADOS – Module I, Dr. Little determined that claimant’s scores were above the Autism Spectrum range but below the criteria for Autism. Dr. Little deferred a diagnosis on Axis II, because she did not test for intellectual capacity. Dr. Little opined that claimant would not be able to perform at his true potential with any formal intellectual assessment at that time due in part to his symptoms of his Autistic Spectrum Disorder. Dr. Little recommended that claimant’s intellectual abilities be re-assessed at the age of five years when a more reliable estimate of his intellectual abilities could be determined.

3. On December 6, 2012, the regional center issued a Notice of Proposed Action stating that claimant no longer had an eligible diagnosis under Welfare and Institutions Code section 4643.5, subdivision (b).

3. Claimant’s mother filed a Request for Hearing and a hearing was scheduled. On December 28, 2012, claimant’s mother and a representative from the regional center held an informal meeting to resolve the matter. During this process, the regional center agreed to pay for another evaluation, which was performed by Kimball Hawkins, Ph.D.

5. Claimant was re-evaluated by August 14, 2012, by Joshua Lefler, Ph.D. Dr. Lefler assessed claimant utilizing the Mental Status Examination, Behavioral Observation, Wechsler Abbreviated Scale of Intelligence (WASI); the Autism Diagnostic Observation Scale Module 2 (ADOS), the Gilliam Autism Rating Scale (GARS); and the Vineland Adaptive Behavior Scales (Vineland). During the evaluation, claimant made good eye contact, answered questions and cooperated well, although he exhibited a “restricted language style.” In his report, Dr. Lefler noted that previous psychological evaluations ruled out Autistic Disorder and indicated that claimant was functioning in the average to low average range of intellectual ability.

- (a) The WASI measures the verbal, nonverbal and cognitive functioning of an individual. Claimant scored in the average range in the vocabulary portion of the WASI. However, claimant was unable to complete the second portion of the test because of a tantrum. No full scale IQ was obtained.
- (b) In the ADOS, claimant obtained a Communication and Reciprocal Total Interaction score of 1, which is well below the autism spectrum cutoff of 8, and the Autism cutoff score of 12.
- (c) Regarding the GARS, Dr. Lefler noted that claimant’s mother stated that she has observed claimant exhibit numerous stereotypic behaviors, communication

delays, and inappropriate behaviors during social interactions, which are associated with Autism Spectrum Disorder. However, Dr. Lefler noted in his report that mother's observations were in stark contrast with the observations made by Dr. Lefler during his assessment of claimant.

- (d) During the Mental Status Examination, claimant maintained appropriate eye contact and described his mood as happy. He was oriented to person, place and time. He was unable to spell simple words although he was able to recite the alphabet and could count to ten with ease. He did however, exhibit difficulty reciting digits in proper order. Dr. Lefler noted that claimant was playful with the examiner when he pretended to attack Dr. Lefler with toy dinosaurs.
- (e) On the Vineland, claimant's scored a 71, which is in the moderately low range in Adaptive Behavior. However, Dr. Lefler noted in his report that mother's responses indicated significant deficits in the areas of Communication, Daily Living Skills, and Socialization. However, her responses were inconsistent with what Dr. Lefler observed during the Mental Status Examination. Therefore, Dr. Lefler opined that that mother's reporting was an underestimation of claimant's true adaptive skills.
- (f) Based on his evaluation, Dr. Lefler opined that claimant does not meet the DSM IV criteria for Autistic Spectrum Disorder. Dr. Lefler diagnosed claimant with PDD, NOS (Provisional) based on history although Dr. Lefler noted that "current test results reveal very little evidence of PDD, NOS." Dr. Lefler also offered a diagnosis of Rule Out Attention Deficit/Hyperactivity Disorder under Axis I, because of claimant's energetic presentation and tendency to move about the examining room and had difficulty being redirected.

6. On October 30, 2012, Dr. Kimball Hawkins evaluated claimant for a third time. Dr. Hawkins assessed claimant utilizing the Wechsler Intelligence Scale for Children – IV (WISC); the Wide Range Achievement Test – Revision IV (WRAT); Bender Gestalt II; the Vineland Adaptive Behavior Scales II (Vineland); and Clinical Observation. In his report, Dr. Hawkins noted that claimant scored in the average range or low average range in the test instruments utilized in the assessment. Dr. Hawkins also noted that claimant appeared very frustrated during the testing, gave up easily on complex tasks, and had limited stamina for sustained concentration. Claimant also appeared very impulsive and easily distractible. Finally, Dr. Hawkins noted that claimant did not exhibit symptoms consistent with autistic spectrum disorder. However, Dr. Hawkins did note that claimant has a mild speech problem and is at risk for a learning delay because he is reading below grade level. Dr. Hawkins diagnosed claimant with Speech Disorder, Attention Deficit Disorder, PDD, NOS by history, and Reading Delay in Axis I. Dr. Hawkins opined that claimant "does not appear to be eligible for Regional Center services because he does not have three substantial handicaps due to autism, cerebral palsy, epilepsy, or intellectual disability."

7. Claimant's mother testified that claimant has difficulty relating to other children and displays anger in a social setting. Claimant also suffers from speech and language delays. Claimant's latest IEP dated October 2012, that "[claimant] continues to qualify for special education services under the eligibility criteria of Autistic-Like Behaviors."

8. The evidence did not establish that claimant suffers from Autistic Disorder. Further, his diagnosis of PDD, NOS, does not, at this time, cause claimant to have a substantial impairment of his cognitive functioning.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 17, section 54000 defines "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mental retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as follows:

(1) "Substantial disability" means the existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as determined by the regional center, and as appropriate to the age of the person:

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

2. California Code of Regulations, title 17, section 54001 defines substantial disability as follows:

(1) 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; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- A. Receptive and expressive language;
- B. Learning;
- C. Self-care;
- D. Mobility;
- E. Self-direction;
- F. Capacity for independent living;
- G. Economic self sufficiency.

3. For Claimant to be eligible for regional center services, it must be determined that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

4. The evidence did not establish that claimant has cerebral palsy, epilepsy or mental retardation, and the evidence did not establish that claimant suffers from Autistic Disorder. Therefore, claimant is not eligible for regional center services based on any of the above conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a),

5. Claimant is not eligible for regional center services based on the fifth category because claimant did not present evidence that he suffers from a disabling condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

6. In this case, since claimant did not establish that he has a major impairment of cognitive and/or social functioning which has resulted in functional limitations in three or more of the above referenced areas. Claimant's evidence relied primarily on school evaluations that referenced his autistic-like behaviors and characteristics, but this evidence is not sufficient for claimant's request to continue receiving services under the Lanterman Act. In any event, the standard for finding a child eligible for special education services is different and more inclusive than the standard for finding a child eligible for regional center services.

7. Claimant is no longer eligible for regional center services pursuant to Welfare and Institutions Code section 4643.5, subdivision (b), in that the original diagnosis and basis for services was clearly erroneous.

ORDER

The Kern County Regional Center's determination that claimant is no longer eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: May 22, 2013


HUMBERTO FLORES
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.