

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

CENTRAL VALLEY REGIONAL
CENTER,

Service Agency.

OAH No. 2014080693

DECISION

A fair hearing was held on November 14, 2014, before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Visalia, California.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC).

Claimant's mother represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on November 14, 2014.

ISSUES

Is claimant eligible for services from CVRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., because he is an individual with cerebral palsy, autism, or intellectual disability, or because he has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability?

FACTUAL FINDINGS

1. Claimant was born in 2008. He is currently six years old. His birth mother used methamphetamine and marijuana while she was pregnant with him. He was adopted at birth by his parents. Until he was three years old, he received services from CVRC under the Early Start Program. Claimant's mother now seeks services for claimant from CVRC under the Lanterman Act.

2014 Psychological Evaluation

2. CVRC referred claimant to the Sullivan Center for Children for a Psychological Eligibility Evaluation. On April 21, 2014, Jason Christopherson, Psy.D, conducted the evaluation under the supervision of Elisabeth Ganiron, Psy.D., and issued an evaluation report. At the time of the evaluation, claimant was five years six months old. Dr. Christopherson noted that claimant had been diagnosed with "mild Cerebral Palsy." He also noted that claimant took medication for Attention Deficit/Hyperactivity Disorder (ADHD). Claimant was enrolled in a transitional kindergarten, and was receiving services under a 504 Plan.

3. Dr. Christopherson administered the Wechsler Preschool and Primary Scale of Intelligence: Fourth Edition (WPPSI-IV), and the Adaptive Behavior Assessment System: Second Edition (ABAS-II). Dr. Christopherson described claimant's behavior as "cooperative throughout the testing, but [he] demonstrated difficulties with sustained attention and impulse control." Claimant "had a difficult time waiting for the evaluator to finish a question before attempting to provide an answer." He "demonstrated fair eye contact that was somewhat inconsistent." His speech was "mildly pressured and highly circumstantial in content." Dr. Christopherson concluded that, given claimant's "observed difficulties with attention and concentration, the results of this evaluation are considered a valid assessment of his overall abilities on a typical day-to-day basis, as opposed to his maximum abilities."

4. On the WPPSI-IV, claimant received the following scores:

<u>IQ</u>	<u>Standard Score</u>
Verbal Comprehension	102
Visual Spatial	91
Fluid Reasoning	79
Working Memory	110
Processing Speed	89
Full Scale IQ	96

Dr. Christopherson found that claimant's scores on the WPPSI-IV indicated that claimant "demonstrated average range skills for verbal reasoning, spatial nonverbal reasoning skills, and working memory skills." Claimant also demonstrated "low average skills for high speed mental processing and borderline to low average skills for nonverbal fluid reasoning." Dr. Christopherson noted that, throughout the testing, claimant

“demonstrated a pattern of scoring in which he failed to receive full points on simpler items within the same content as he did on subsequently more difficult items.” This “pattern of ‘hit-or-miss’ type scoring suggested difficulties with sustained attention and concentration throughout each test.”

5. Dr. Christopherson worked with claimant’s mother to complete the ABAS-II to determine claimant’s adaptive functioning. Claimant received the following scores on the ABAS-II:

<u>Domain</u>	<u>Composite Score</u>
Conceptual	63
Social	68
Practical	46
GAC	58

As Dr. Christopherson noted, on the ABAS-II, claimant “was reported to demonstrate a number of adaptive deficits falling within the deficient range.” He “demonstrated deficiencies in communication, functioning academic skills, domestic skills, self-care and safety skills, as wells as self-direction and social interaction.” He was “reported to be developing typically with regard to adaptive communication skills and falls within the borderline range for adaptive skills for leisure.” Overall, claimant demonstrated “mildly deficient adaptive skills given his developmental age.”

6. Dr. Christopherson found that the results of the intellectual testing indicated that claimant had “difficulties with sustained attention,” but otherwise had “typical cognitive functioning for a child his age.” Dr. Christopherson also found that claimant’s difficulties “attending to the instructions” and “sustaining attention” during the testing may have “impacted the stability of his intellectual functioning.” Claimant “also demonstrated significant variability in non-verbal fluid reasoning skills and therefore received a borderline domain score.”

7. Dr. Christopherson found that the results of the adaptive skills testing demonstrated that claimant had “significant deficiencies in meeting age appropriate self-help and interpersonal skills necessary for adaptation to his environment.” He did “fairly” typically with regard to “using communication in order to adapt to his environment,” and demonstrated a “near typical ability to engage in leisure activities.” But, with regard to “self-direction, independence, domestic living tasks, and functional academics, he received mild to moderately deficient scores.”

8. Given the results of the evaluation, Dr. Christopherson opined that claimant did not warrant a diagnosis of intellectual disability. As Dr. Christopherson explained, although claimant’s “ability to adapt to his environment shows significant developmental delay, test results indicate that it is not likely due to deficient intellectual functioning.” Dr. Christopherson described claimant’s “medical complications” and ADHD as “possible major contributors to his deficient adaptive functioning.”

9. Dr. Christopherson also opined that, although claimant demonstrated “some social and interpersonal behaviors similar to others on the Autistic spectrum, he did not demonstrate the kinds of deficiencies in social communication, joint attention, and relational style endemic to that disorder.” Claimant also did not demonstrate “any stereotypic movements common to children on the Autistic spectrum.” Given claimant’s “great difficulties with changes in routines,” and “an obsessional thinking style,” Dr. Christopherson suggested that further clinical assessment would be appropriate to “rule out an anxiety or obsessive-compulsive disorder.”

Earlier Evaluations and Reports

10. At the hearing, CVRC submitted other evaluations and reports regarding claimant.

11. On May 16, 2011, claimant was evaluated at Shriners Hospitals for Children, Northern California Hospital. At the time, claimant was two and one-half years old. Claimant was diagnosed with “asymmetric spastic diplegia and some right hemiparesis, which is quite subtle.” These clinical findings of cerebral palsy were “quite mild.”

12. On August 26, 2011, Judith Newton, M.S., P.T., of United Cerebral Palsy of Central California (UCP), visited claimant’s childcare to assess claimant’s gross motor skills. She observed claimant on the playground with other children and during a “teaching session with fine motor activities.” Ms. Newton observed that claimant was “able to run well.” He demonstrated “a smooth symmetrical pattern.” He was “able to ride a tricycle fairly well.” There was “no asymmetry or fatigue demonstrated.” Ms. Newton found that claimant was in the “30 to 36 month range for gross motor” skills. Ms. Newton “did not see any concerns.”

13. Leslie Gogue was a licensed Occupational Therapist with UCP. On August 30, 2011, Ms. Gogue assessed claimant’s fine motor, self-help and social skills at his preschool. His fine motor skills were assessed to be in the 28- to 35-month range. Ms. Gogue stated that she had “no concerns” with his fine motor skills at that time. She assessed his self-help skills to be in the 25- to 35-month range. She saw “no concerns” with his self-help skills at that time. She assessed his social skills to be in the 35-month range. She also had “no concerns” with his social skills at that time.

14. Susan Gonzalez was claimant’s UCP Case Manager. On October 4, 2011, she evaluated claimant, when he was 36 months old. She assessed his cognitive, language, gross motor, fine motor, social, and self-help skills to be at the 36-month range. She did not note any concerns in any of these areas.

15. On October 12, 2011, when claimant was 36 months old, he was found to no longer qualify for the Early Start Program.

16. On January 23, 2014, claimant’s mother and school district entered into a 504 Plan for claimant. That plan listed claimant’s diagnoses and statement of concerns as: “ADHD, inattentive, hyperactive, impulsivity, he will take off, and Cerebral Palsy.” It listed

claimant's strengths as "Friendly, Open, Good at sharing, Expresses his feelings/thoughts, knows his letters/sounds, Happy, Energetic, Joy to be around, Sweet, Smart." The 504 Plan put in place some accommodations for claimant, including: (1) "Chart with a timer, every 5-minutes check naughty or nice depending on where he is at during the 5-minute interval"; (2) "ADHD controlled with medication (stimulant) – working on levels"; (3) "During carpet time he has the option to stay in his seat"; (4) "He has a special seat"; (4) "He has the option to ask for a break or to sit elsewhere"; (5) "Positive reinforcement (verbal, high fives, hugs, iPad time)"; and (6) "Rewards after school (play games on phone after school in daycare)."

17. Claimant does not have an Individual Education Plan (IEP), which would allow him to receive special education services from his school district.

18. Elinor M. Zorn, M.D., is claimant's pediatrician. She wrote a letter supporting his mother's request for services and supports from CVRC. In her letter, Dr. Zorn described claimant as "extremely hyperactive." She stated that although he is on medication for ADHD, he "still cannot attend for more than a brief time." She opined that claimant "requires constant supervision." He "has no impulse control and will get into things moments after he has been told not to." He has "problems with fine motor control, a common problem for children with ADHD." He has been receiving occupational therapy, which "has been very helpful to him." Dr. Zorn opined that:

Although [claimant] is not retarded, he requires the same supervision as a retarded individual. One cannot rely on his understanding or judgment to keep him out of trouble. He is very wearing on his parents. The respite that the Regional Center has provided for them has been very helpful in the past.

Testimony at Hearing

19. Carol Sharp, Ph.D. Dr. Sharp is a Staff Psychologist employed by CVRC. At the hearing, she testified about whether the exhibits admitted into evidence indicated that claimant was eligible for services from CVRC. Dr. Sharp explained that, in order to qualify for services from CVRC, an individual must be diagnosed with one or more of the five developmental disabilities delineated in the Lanterman Act: intellectual disability, cerebral palsy, epilepsy, autism, and/or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability (fifth category). Furthermore, an individual who has one of the included developmental disabilities must be "substantially disabled" by that disability. To establish a "substantial disability," the individual must have significant functional limitations in three or more major life activities as appropriate to the age of the individual: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and/or economic self-sufficiency. In addition, the individual's functional limitations must be directly related to the developmental disability that qualifies the individual for services under the Lanterman Act.

20. In evaluating claimant's eligibility for services, CVRC looked at all the categories of developmental disabilities set forth in the Lanterman Act.

21. Dr. Sharp explained that, in order to qualify for services under the developmental disability category of intellectual disability, claimant had to have an IQ under 70 and deficits in adaptive functioning as a result of his cognitive limitations. As set forth in the Psychological Eligibility Evaluation report prepared by the Sullivan Center for Children, claimant's Full Scale IQ was measured at 96. Dr. Sharp opined that, given claimant's difficulties with attention and concentration noted by Dr. Christopherson, claimant's full scale IQ may actually be higher than 96. Given the scores claimant received during the IQ testing, Dr. Sharp opined that claimant does not qualify for CVRC services under the developmental disability category of intellectual disability.

22. Dr. Sharp explained that the fifth category is intended to include individuals whose IQ scores are slightly higher than 70, but who still have significant deficits in cognitive functioning. To fall within the fifth category, an individual must function like someone with an intellectual disability or require treatment similar to the treatment required by individuals with an intellectual disability. According to Dr. Sharp, the higher an individual's IQ score is above 70, the less likely it is that the individual functions like individuals with an intellectual disability. Given claimant's full scale IQ of at 96, Dr. Sharp opined that claimant does not function like an individual with an intellectual disability.

In addition, there was no showing that claimant requires treatment similar to that required by individuals with an intellectual disability. Dr. Sharp recognized that claimant had deficits in adaptive functioning, including difficulties with sitting still and focusing. But from the information submitted to CVRC, Dr. Sharp believed that these adaptive deficits were caused by claimant's ADHD, and were not related to claimant's cognitive functioning. According to Dr. Sharp, the treatment for these types of behavioral issues is different from the treatment provided to individuals with cognitive deficits. Consequently, Dr. Sharp opined that claimant does not qualify for services from CVRC under the fifth category.

23. Dr. Sharp recognized that claimant has been diagnosed with cerebral palsy. But all the information provided to CVRC indicated that claimant's cerebral palsy is "quite subtle," and does not substantially handicap him. The UCP evaluators noted no concerns with claimant's fine motor, gross motor, self-help or social skills as a result of claimant's cerebral palsy. Consequently, Dr. Sharp opined that claimant did not qualify for services from CVRC under the developmental disability category of cerebral palsy.

24. With regard to whether claimant is on the autism spectrum, Dr. Sharp pointed to Dr. Christopherson's opinion that claimant "did not demonstrate the kinds of deficiencies in social communication, joint attention, and relational style endemic to" individuals with an autism spectrum disorder, and did not demonstrate "any stereotypic movements common to children on the Autistic spectrum." Dr. Sharp recognized that claimant exhibited some symptoms related to his ADHD that overlapped with symptoms sometimes seen in children on the autism spectrum. But she noted that there was no indication that these overlapping symptoms caused claimant to be on the autism spectrum. Consequently, Dr. Sharp opined

that claimant was not eligible for CVRC services under the developmental disability category of autism.

25. In sum, Dr. Sharp opined that claimant was not eligible for services from CVRC under the Lanterman Act.

26. Claimant's mother. Claimant's mother is a social worker with a master's degree. She testified that she sought services from CVRC in order to get resources to help claimant. She described claimant's ADHD and the deficits he has with social and self-care skills. She testified that claimant cannot "concentrate for five minutes." He cannot dress himself. She has to help him bathe, comb his hair and brush his teeth. He will only eat a limited number of foods. She is very concerned about his safety. He has no concept of his own safety, and runs out into the street. She has made special arrangements with his school to allow her to go on campus in the morning and afternoon to pick him up because he was running out into traffic. He insists upon following very rigid routines.

27. Because of his cerebral palsy, claimant wears a brace on one of his legs when he sleeps, but he does not need to wear it during the day. He receives some informal accommodations during his P.E. class due to his cerebral palsy.

28. Claimant's mother was concerned that Dr. Christopherson did not have claimant's previous file from CVRC when he evaluated claimant in April 2014. She was also concerned that Dr. Christopherson was not aware, before he began his evaluation, that claimant was exposed to methamphetamine and marijuana in utero.

Discussion

29. When all the evidence is considered, claimant's mother did not establish that claimant is eligible for services from CVRC under any of the categories of developmental disabilities covered under the Lanterman Act.

30. Although claimant has been diagnosed with cerebral palsy, he is not substantially disabled by that condition to qualify for services from CVRC under that developmental disability category. Dr. Sharp's opinions that claimant is not an individual with autism or an intellectual disability, and did not qualify for services under the fifth category, were persuasive. There was no indication that claimant has a seizure disorder. Although claimant has adaptive functioning deficits as a result of his ADHD, the evidence did not establish that these deficits were due to any developmental disability recognized in the Lanterman Act. The concerns of claimant's mother that, before Dr. Christopherson began his evaluation, he did not have information from CVRC about claimant's previous qualification for services under the Early Start Program or his exposure to methamphetamine and marijuana in utero did not open Dr. Christopherson's evaluation up to question. His evaluation appears to be thorough and well-reasoned. His conclusions are persuasive. In sum, claimant's mother did not establish that claimant has a developmental disability that qualifies him for services from CVRC under the Lanterman Act.

31. The legislature made the determination that only individuals with one or more of the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including mental health disorders, if they cannot show that they fall within one of the five categories delineated in the act. In addition, the legislature provided that, in order for an individual to qualify for services under the Lanterman Act, the individual's developmental disability must be substantially disabling and must be the cause of the adaptive deficits as to which the requested services relate. Although the result may seem harsh, particularly for individuals with ADHD as severe as claimant's, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant's mother did not show that claimant is substantially disabled by his cerebral palsy, that he is an individual with autism or an intellectual disability, or that he has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability, she did not establish that claimant is eligible for services under the Lanterman Act. Consequently, her request for services from CVRC must be denied.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, regional centers provide services to individuals with developmental disabilities. As defined in Welfare and Institutions Code section 4512, subdivision (a), a "developmental disability" is:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

2. Welfare and Institutions Code section 4512, subdivision (l), defines "substantial disability" as follows:

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and 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.

Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

3. 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, § 54000, subd. (c).)

4. As set forth in the Findings, claimant's mother did not establish that claimant is eligible for services under the Lanterman Act because he has cerebral palsy that is substantially disabling, because he is an individual with autism or an intellectual disability, or because he has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. Consequently, she did not establish that claimant is eligible for services and support from CVRC under the Lanterman Act. Claimant's appeal must therefore be denied.

ORDER

Claimant's appeal is DENIED. Central Valley Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATED: November 18, 2014

KAREN J. BRANDT
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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)