

BEFORE THE
DEPARTMENT OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

KERN REGIONAL CENTER,

Respondent.

OAH No. 2014040007

DECISION

This matter came on regularly for hearing on May 15, 2014, in Bakersfield, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Claimant was represented by his aunt and authorized representative, Ruby Jenkins.

Kern Regional Center (Service Agency) was represented by Karina Proffer, Program Manager.

Oral and documentary evidence was received. The record was closed on May 15, 2014, and the matter was submitted for decision.

ISSUE

The issue is whether the Service Agency should be required to perform an assessment as part of a diagnostic evaluation to determine whether Claimant is eligible for regional center supports and services.

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EVIDENCE RELIED UPON

1. Service Agency's Exhibits A-E.
2. Claimant's Exhibits 1-2.
3. Testimony of Ruby Jenkins.
4. Testimony of Claimant.

FACTUAL FINDINGS

1. Claimant is a 36-year-old male who seeks regional center supports and services.

2. Claimant grew up in Albuquerque, New Mexico. He has approximately 12 siblings. His father and one brother are diagnosed with intellectual disability. His mother is not involved in his life and has been uncooperative with Claimant's aunt in her attempts to obtain Claimant's early school and health records.

3. Claimant receives Social Security Income (SSI) benefits for which his aunt is the authorized payee. He claims to have been in special education classes in his early schooling, but he lacks records from his schools. Claimant's aunt has attempted to procure Claimant's medical and school records but has been unsuccessful in doing so.

4. On March 10, 2014, the Service Agency wrote to Claimant denying his request for a diagnostic evaluation. In that letter, the Service Agency wrote:

Review of records received from agencies/schools provided to us by you, are not indicative of having a developmental disability per Regional Center criteria (mental retardation, cerebral palsy, epilepsy or autism). However, please be aware that the case can be reconsidered for an assessment if in the future you are able to provide further diagnostic data indicating a developmentally [*sic*] disability which meets Regional Center criteria.

(Exhibit A3.)

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5. In its letter of March 10, 2014, the Service Agency made no mention of possible “fifth category” eligibility (Welf. & Inst. Code, § 4512, subd. (a)). Its denial of a diagnostic evaluation and its claim that Claimant’s records are not indicative of having a developmental disability per regional center criteria was apparently based on three pieces of paper, admitted at the hearing as Exhibits C, D, and E, respectively.

a. Exhibit C is a single-page document entitled Kern Regional Center Inquiries and Request for Services, according to which a request was made for “referral/acceptance for assessment.” (*Ibid.*) A handwritten note on that document reads: “No evidence of an eligible condition. Try KCMH [Kern County Mental Health], DOR [Department of Rehabilitation] etc.” That note is followed by illegible initials and the date of March 4, 2014.

b. Exhibit D is a single-page letter from Kaswant Khokhar, M.D., dated February 25, 2014. The letter states in part: “[Claimant] is a patient here at Truxtun Psychiatric Medical Group. [Claimant] has been under the direct care and treatment of this office since 09/01/2011 thru the present date for a diagnosis of Schizoaffective Disorder.” (*Ibid.*) Dr. Khokhar goes on to state that Claimant is on a medication regimen, and that he is a compliant patient. The letter does not state how Dr. Khokhar reached the diagnosis of Schizoaffective Disorder or even if it was Dr. Khokhar who made the diagnosis. It also contains no information concerning Claimant’s medical/developmental history.

c. Exhibit E is an unofficial school transcript from Vista Continuation High School, indicating that, as of January 31, 2014, Claimant had completed 40 of the 220 credits needed for graduation. His grade point averages in the ninth and eleventh grades were 2.167 and 3.000, respectively. In tenth and twelfth grades, his grade point average was 0.00.

6. On April 1, 2014, an informal fair hearing meeting was held. At the end of the meeting, the onus was again placed on Claimant’s aunt to obtain additional records. She attempted to do so. However, as indicated above, Claimant’s mother was uncooperative in obtaining records from Claimant’s native New Mexico. In addition, Dr. Khokhar terminated his medical practice, thus precluding Claimant’s ability to obtain Dr. Khokhar’s approval for a diagnostic evaluation.

7. The Service Agency continues to refuse to have an assessment performed on Claimant, relying solely on the opinion of an anonymous individual in Exhibit C, Dr. Khokhar’s conclusory statement that Claimant suffers from Schizoaffective Disorder, and a single-page school transcript that sheds little, if any, light on the issue of Claimant’s eligibility.

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LEGAL CONCLUSIONS

1. The Service Agency must perform an assessment as part of a diagnostic evaluation to determine whether Claimant is eligible for regional center supports and services.

2. Welfare and Institutions Code¹ section 4642, subdivision (a) states in relevant part:

(1) Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers. . . .

(2) Initial intake shall be performed within 15 working days following request for assistance. Initial intake shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity and vocational training, medical, dental, recreational, and other services or programs that may be useful to persons with developmental disabilities or their families. Intake shall also include a decision to provide assessment.

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¹ All statutory references are to the Welfare and Institutions Code.

3. Code section 4643 states in pertinent part:

(a) If assessment is needed, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b).

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

4. Pursuant to Code section 4643, subdivision, (a), a regional center is not necessarily required to perform an assessment in every case in which an individual seeks to become a consumer. However, in this case, the basis for denying Claimant's request for an assessment is woefully inadequate. The handwritten note in Exhibit C is completely without foundation in that it was not established who wrote it or the basis for the author's opinion. Dr. Khokhar's reference to a diagnosis of Schizoaffective Disorder similarly lacks foundation in that he failed to identify who made the diagnosis, how the diagnosis was made, and whether a developmental diagnosis was even considered as a co-morbid condition. Exhibit E shows only that Claimant did poorly while at Vista Continuation High School.

5. The evidence failed to show that the Service Agency even considered a fifth-category² determination. On the contrary, fifth category was conspicuously absent from the March 10, 2014 letter denying Claimant's request for an assessment (Exhibit A3.) By denying that request, the Service Agency also failed to consider a co-morbid condition pursuant to California Code of Regulations, title 17, section 54000, subdivision (c)(1), which precludes eligibility for solely psychiatric disorders, but does not preclude eligibility when a qualifying developmental disorder co-exists with a psychiatric disorder.

² Eligibility may be based on intellectual disability (formerly mental retardation), cerebral palsy, epilepsy, autistic spectrum disorder (formerly autism), and/or a "fifth category" described as "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation" (Welf. & Inst. Code, § 4512, subd. (a).)

6. The Service Agency has taken unfair advantage of the situation. First, when Claimant's aunt was unable to obtain Claimant's medical and school records from New Mexico due to the lack of cooperation from Claimant's mother, it required her to continue to do so while refusing to conduct an original assessment. Then, it denied Claimant's request for an assessment based on three unreliable single sheets of paper. Then, knowing that Claimant bore the burden of proof in the fair hearing, the Service Agency offered no justification for its position, relying instead on the lack of records produced by Claimant through no fault of Claimant or his aunt. That conduct suggests a posture which is antithetical to the Service Agency's obligations to the public as mandated by the Legislature. (Code § 4500 et seq.)

ORDER

The Service Agency shall cause to be conducted a full and complete assessment/diagnostic evaluation for the purpose of determining Claimant's eligibility for regional center supports and services forthwith.

Dated: May 19, 2014

_____/s/_____
H. STUART WAXMAN
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.