

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2015090121

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge (ALJ) with the Office of Administrative Hearings on January 19, 2016, in Culver City, California.

Claimant was represented by Carmen Carly, claimant's advocate.

The Westside Regional Center (service agency or regional center) was represented by Lisa Basiri, Fair Hearing Specialist.

Evidence was received and testimony was taken. During the hearing, Ms. Basiri informed the ALJ that Ms. Carly had written a letter requesting reimbursement for claimant's family for funds spent for a privately retained psychologist to evaluate claimant and to testify as a witness in this matter. The undersigned indicated that he would address this issue after taking evidence; however, Ms. Carly did not raise the issue during the hearing. In any event, there is no authority in the Lanterman Developmental Disabilities Services Act (Lanterman Act) to order the regional center to reimburse claimant's family for such an expense.

The matter was submitted for decision on January 19, 2015.

ISSUE

Does claimant's diagnosis of Autism Spectrum Disorder qualify him for regional center services under Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1-11; claimant's Exhibits A-M.

Testimony: Thompson Kelly Ph.D.; Mary Elizabeth Large, Ph.D.; and claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 17-year-old boy who is requesting eligibility for regional center services based on his diagnosis of Autism Spectrum Disorder.

2. Claimant has been receiving special education services since he entered school. He was initially found eligible for special education based on a specific learning disability, which caused deficits in the processing area of auditory memory and attention.

3. Claimant initially requested regional center services in 2004, when he was five years old. In May 2004, the regional center denied claimant's request for services. In a May 10, 2004 letter of denial, the regional center stated that claimant "does not have a substantially handicapping condition of mental retardation (or similar condition), autism, epilepsy, or cerebral palsy. . . . He meets eligibility for special education through the classification of 'specific learning disabilities' based on deficits in processing of auditory material and attention. Learning disabilities do not qualify for one of our services. . . . There is no evidence to suggest that [claimant] functions in the mentally retarded range or has any other Regional Center diagnosis." (Exhibit 3.)

4. For the past eight years, claimant has attended Village Glen School, a non-public school program that provides special education services in a very structured school setting and environment known as The Help Group West. He is now a senior in high school. Claimant's 2014 Individualized Education Plan (IEP) notes his eligibility for special education services as a student with autism (Exhibit 9). Village Glen School provides significant support for claimant to ensure a successful school experience. For example, claimant's mother testified that claimant is given extra time to take tests and to complete assignments. Claimant has performed well in this structured education program, earning a 3.97 GPA.

5. While claimant has done well in his school, he nevertheless continues to exhibit delays in social skills, self-direction and independent living skills. Martha Jimenez, Assistant Head of Help Group West, wrote a letter describing the support claimant receives that has helped his performance at school. Her letter stated in pertinent part:

Please note that his academic success has been facilitated by the structures and supports in place at his current setting. He benefits from redirection, and extra time on assignments, tasks

broken down, repetition and clarification of instructions, breaks, small group instruction, graphic organizers, and visual and verbal cues.

[Claimant] shows great hesitation to complete social tasks independently. He lacks confidence to make individual purchases while out in the community and does not seek assistance from community helpers. He struggles with consumer math skills such as budgeting and understanding the cost of basic adult necessities (i.e. groceries, bills, etc.). He requires staff prompting & encouragement to ask questions and navigate novel settings. [Claimant] is unable to determine a public transportation route without maximum guidance from staff. . . . When confronted by challenging, uncomfortable, or frustrating academic and/or social situations, [claimant] will ignore a given situation, or communicate non-verbally (tensing of his body). Overall, he displays major challenges communicating needs and wants with unfamiliar people; difficulty sharing dislikes with others, or saying “no” if something makes him uncomfortable, which makes him vulnerable to being taken advantage of. (Exhibit M.)

6. In 2015, claimant applied for regional center services. Upon receipt of claimant’s request for services, the regional center suggested that claimant undergo a psychological evaluation.

7. Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of claimant on June 24, and on July 1, and 15, 2015. Dr. du Verglas noted in her report that claimant walked with a very stiff gait, did not move his body, while maintaining a very stiff position. Claimant remained very still throughout the assessment, had good eye contact when spoken to directly, yet never initiated any conversation or asked questions. Claimant sat very quietly without any movement in the chair, with no usage of gestures. Dr. du Verglas utilized a number of testing instruments including an interview with claimant’s parents; Autism Diagnostic Observational Schedule, Module 3 (ADOS-3); Vineland Adaptive Behavior Scales – Second Edition (Vineland-II); the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV); and the Wide Range Achievement Test – Fourth Edition (WRAT-4). The results of the evaluation were as follows:

(a) On the WAIS-IV, claimant scored in the average range in verbal comprehension, in the low average range in perceptual reasoning, in the average range in working memory and in the low average range in processing speed. Claimant’s full scale IQ was determined to be 92 (average range).

(b) On the Vineland-II, claimant was given an Adaptive Composite Score of 73, which is in the moderately low range. Claimant scored in other areas as follows: 75 (moderately low) in communication skills; 79 (moderately low) in daily living skills; and 71 (moderately low) in socialization. Dr. du Verglas indicated in her report that claimant is very quiet and does not initiate conversations and only answers questions. He does not modulate his voice appropriately and speaks in a monotone high-pitched voice. Regarding socialization, Dr. du Verglas notes that claimant does not go anywhere on his own because of the anxiety he suffers. He socializes somewhat with his classmates; however, he has not developed any friendships independently.

(c) On the ADOS-3 testing, Dr. du Verglas determined that claimant's scores were within the autistic range. Regarding the communication portion of the module, Dr. du Verglas noted claimant did not use gestures while speaking and was unable to keep conversations flowing. In the area of reciprocal social interaction, Dr. du Verglas noted that the quality of claimant's social responses was poor in that he did not initiate any conversations. He has difficulty describing emotions, does not change facial expressions, and is unable to answer any questions about expectations concerning future personal relationships. Claimant typically stays in his room, keeps the door closed, and does not initiate conversations even with close family members. His interests are narrow, consisting of his animals, his homework, and computer video games. Dr. du Verglas opined that claimant has significant delays in social interaction, causing substantial impairment in social, occupational, or other important areas of current functioning. (Exhibit 7.)

8. Based on the above testing, Dr. du Verglas determined that claimant suffers from Autism Spectrum Disorder with language impairment under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V).

9. In a Notice of Proposed Action dated August 10, 2015, the Service Agency determined that claimant is not eligible for regional center services based on its contention that his autism has not caused claimant to experience significant functional limitations in at least three areas of major life activity as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title 17, section 54000. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Act. Claimant filed a request for a hearing.

10. In a letter dated August 23, 2015, Dr. du Verglas set forth her concerns over the regional center's decision denying eligibility. In her letter, Dr. du Verglas notes that claimant was initially diagnosed at the age of five. He was placed in special education due to his severe social difficulties. Dr. du Verglas further states in her letter that claimant's body posture is extremely rigid and he does not make any gestures. He never initiates conversations and has never established any friendships independently. He is unable to care for his needs and has never left the house independently to access the community. Dr. du Verglas opined the following in her letter:

[Claimant's] average cognitive abilities are not reflective of his very significant adaptive delays as described in the report. Despite average cognitive abilities, [claimant] is unable to function independently as an adult. He is approaching maturity. He is very severely handicapped in the following domains; communication; self-direction; economic self-sufficiency. His social presentation will for sure preclude ability to participate in competitive employment. His social delays are very significant, and if able to participate in college, [he] will require remediation as his social presentation and deficits are very significant.

In summary, [claimant] presents with very classic severe symptoms of Autism Spectrum Disorder diagnosis despite average cognitive functioning. I was completely taken back by the decision that he was considered not eligible as his diagnosis is very clear and his deficits very substantial. . . . I feel compelled to advocate on his and his family's behalf as without regional center support he will clearly be unable to function as an adult. (Exhibit F.)

11. After receiving Dr. du Verglas' letter, the Interdisciplinary Eligibility Committee, consisting of two psychologists, a physician and Licensed Clinical Social Worker from the regional center, decided to have claimant reassessed by another psychologist.

12. Claimant was reassessed on October 14, 2015, by Karen E. Hastings, Ph.D. Dr. Hastings interviewed claimant for approximately one hour to assess claimant's language, learning capacity, self-care, self-direction, mobility capacity for independent living, and economic self-sufficiency. Dr. Hastings issued a report, which noted the following observations:

- (a) Regarding claimant's receptive and expressive language, Dr. Hastings noted in her report that claimant's speech was fluent but was slow and lacked prosody (lacking the rhythmic and intonational aspect of language). He appeared thoughtful in answering questions and made good eye contact, however, his

facial expressions were restricted in range and displayed little affect. Moreover, claimant barely initiated any spontaneous engagement with Dr. Hastings in that the hour-long conversation consisted primarily of the examiner asking questions and claimant responding to the questions. There was little spontaneous input on his part;

- (b) In the area of self-direction, claimant informed Dr. Hastings that he only drives when accompanied by a parent or another adult and relies on the other person to give directions and to tell him when and where to turn. Claimant also admitted that he feels anxiety when out in the community. He experienced a particularly anxious moment two years ago when walking by himself, and since that time he has avoided venturing out in the community alone. When claimant returns home from school, he studies, watches television, or plays video games. Claimant noted that he had four or five friends, including a neighborhood friend. However, when questioned about his “friendship” with his neighbor, claimant stated that it consisted of saying hello on occasion when they saw each other outside. Dr. Hastings opined that claimant seems to know how to make friends; however, his ability to initiate and implement this knowledge is questionable. Moreover, claimant did not grasp the widespread opportunity to make friends in a future college environment and never mentioned bonding over fun activities or shared interests.
- (c) Regarding claimant’s ability to learn, Dr. Hastings noted in her report that claimant appeared to have no difficulty with learning based on his GPA (3.97) and SAT scores (1480). Nor did claimant exhibit difficulties with his mobility.
- (d) In the area of independent living skills, Dr. Hastings noted that claimant reported that he prepares his own breakfast and can make sandwiches for lunch. He also reported that he does his own laundry. Dr. Hasting found that claimant seems to be able to perform age-appropriate independent living skills, but there are other skills, which he has not yet had the opportunity to perform or implement.
- (e) Regarding economic self-sufficiency, Dr. Hastings noted claimant’s unpaid position as a teacher’s assistant in a religious education program and his future participation in the school workability program.

- (f) Based on her evaluation of claimant, Dr. Hastings opined that claimant presents himself as someone who has few difficulties in life. He has difficulty seeing his own deficits in the areas of social communication and interactions. (Exhibit 5.)

13. On December 8, 14 and 15, 2015, claimant was evaluated by Mary Large, Ph.D. Dr. Large noted in her report that claimant's responses to questions during the assessment showed a response pattern that was "biased in an exceptionally positive direction, indicating that he tended to deny even minor flaws or foibles that most individuals his age would acknowledge." Dr. Large utilized a number of testing instruments including; Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II); Basic Scale Assessment for Children (BASC); Behavior Rating Executive Functioning (BRIEF); and the Vineland Adaptive Behavior Scales (Vineland). The results of the evaluation were as follows:

- (a) On the WASI-II, claimant scored in the average range with a full-scale IQ of 91. Claimant's verbal comprehension and perceptual reasoning were both in the average range, scoring 94 and 92 respectively. Dr. Large noted that claimant does not have specific learning deficits, as might be observed in an individual with a specific learning disorder. However, claimant did exhibit difficulties on measures of "verbal automaticity." That is, although claimant is accurate, "he is very slow in naming what should be discrete, familiar data points, such as letters, numbers, colors or simple words. He is also exceptionally slow in visually scanning and sequencing discrete bits of information that should be very familiar to him. Claimant also has difficulties in executive functioning, in that he has difficulty attending and encoding verbal data that is not inherently organized." Finally, claimant exhibited limitation on tasks assessing cognitive and problem solving flexibility and working memory.

- (b) The BASC is a scale designed to assess self-perception of behaviors along an internalizing and externalizing dimension. Claimant's responses fell within the typical limits, suggesting that he believes he is able to see his part in situations and to take responsibility for same. However, Dr. Large noted that claimant's "response pattern was biased in an exceptionally positive direction, indicating that his profile should be interpreted with caution, as claimant may have minimized any concerns."

- (c) The BRIEF measures aspects of executive functioning along two dimensions, the "behavioral regulation index and the metacognition index. The former assesses a child's ability to demonstrate cognitive flexibility via shifting cognitive sets, to

modulate affect/emotion, and to demonstrate inhibitory control over both behavior and affect.” Claimant’s ratings along the behavioral regulations index fall within typical limits in the areas of behavioral and emotional inhibitory control. However, ratings in the area of cognitive and behavioral flexibility are in the clinically significant range, in that claimant’s parents observe him to have marked limitations to this aspect of his thinking and behavior. In contrast, based on claimant’s self-reporting, his ratings are typical in all of the areas assessed in the BRIEF testing.

(d) The Vineland assesses adaptive behavior and functioning across different domains, including communication, daily living skills, socialization, and motor skills. Ratings across the three of the dimensions of the Vineland indicate universal and significant impairments in functioning. Claimant’s communications skills were rated markedly impaired, with overall ratings in the low range (1st percentile). Dr. Large rated claimant’s functional expressive and receptive language as more profoundly impaired, as reflected in age equivalent scores of two years, 11 months and four years, seven months respectively. Claimant’s ratings in the area of daily living skills fell in the low range (1st percentile). Claimant scored in the low range in the area of socialization (at or less than the 1st percentile). Play and leisure skills were rated at an age-equivalent of three years, seven months, interpersonal skills were rated at the two-year level, and coping/adaptive skills were at the ten-month age-equivalent level. (Exhibit D.)

14. Based on her evaluation, Dr. Large noted in the summary of her report that although claimant is accurate, he is very slow in naming what should be discrete, familiar data points, such as letters, numbers, colors or simple words. He is also exceptionally slow in visually scanning and sequencing information that should be very familiar to him. Claimant also has difficulties in executive functioning, in that he has difficulty encoding verbal data that is not inherently organized and has limitations in cognitive and problem solving flexibility and working memory. In addition, claimant has trouble consistently monitoring what he is doing, as evidenced by his tendency to perseverate on problem solving strategies that are ineffective. Claimant’s difficulty in initiating and maintaining reciprocal conversation reflect his problems in generating ideas in the absence of clear structure or prompts, and his problems in tracking what those around him are saying. (Exhibit D.)

15. Dr. Large testified that when she interviewed claimant, he exhibited very poor social and pragmatic communication. He had poor eye contact; flat facial expression; uniform tone in speech; he was very rigid in that he used no hand gestures; he did not initiate conversation or ask questions; and did not exhibit any type of reciprocity. Dr. Large stated that she drove the entire conversation and claimant gave very limited responses. In fact,

claimant's overall ability to engage is very limited. Dr. Large further testified that while claimant has performed well in his very structured and supportive school environment (3.97 GPA), he will experience substantial difficulties if he attends college. Claimant will not have this type of structured program in college where he will be expected to work independently. In addition to claimant's inability to work independently, his poor working memory presents an added difficulty. Regarding claimant's poor working memory, Dr. Large wrote the following in her report:

The data indicate that [claimant] has the most difficulty taking in and holding on to information that is not inherently organized or structured. That is when having to learn information that is not presented in a visually familiar or clearly organized way, such as when asked to recall a series of faces, or to recall verbal data points in serial order or list form, then [claimant] takes in much less information, even with repetition and corrective feedback. Similarly, [claimant] has trouble holding onto complex visual data when there is no clear organizational structure within which to work. He also appears to have difficulty with one-shot learning, not only for discrete information, but for narrative story-based information as well. . . . This has some implications moving forward, as [claimant] is going to be increasingly required to independently interact with and organize material to be learned as he transitions out of his highly structured, nonpublic school, into a college or university.

16. Based on her thorough evaluation, Dr. Large opined that claimant suffers substantial impairment in the following major life activities:

- (a) Claimant is substantially impaired in functional, pragmatic and social language. In addition to the behaviors he set forth above such as poor eye contact, flat facial expression, rigidity, monotone speech, and lack of reciprocity, claimant's ability to understand and use abstract and figurative language is quite limited. He does not spontaneously provide much, if any, information even with prompting. Finally, claimant's ability to convey information about his feelings is even more strikingly impaired.
- (b) Claimant's ability to independently engage in age-appropriate self-direction is impaired, and his ability to engage in age-appropriate leisure activity is limited. He tends to isolate himself in his room, spending time on the computer or watching cartoons geared toward significantly younger children. Claimant does not have close friendships and makes no effort to contact or converse with his peers. His ability to

directly initiate and sustain age-typical interactions is profoundly limited. The presence of these behaviors suggests that claimant is contending with a substantial disability in the area of self-direction.

- (c) Claimant is also profoundly limited in the area of age-appropriate independence. He does not know how to sort, wash, dry or fold his own laundry. He can start the process when prompted but does not follow through to complete the tasks. He can warm food in a microwave but cannot prepare a meal. In addition, claimant is fearful about leaving the house alone even to go out in his immediate community. Although he has a driver's license, claimant does not drive by himself and does not drive on the freeway. This is a potentially an impediment to transporting himself to school or work. Finally, claimant's ability to recognize when he is in a potentially exploitive or unsafe condition is limited, evidencing additional limitations in social judgment and decision making. Considered together, Dr. Large opined that these symptoms constitute a substantial impairment in the area of independence.
- (d) Claimant is also "exceptionally limited" in his ability to seek even part-time work. This is related to his limitations with independence and self-direction. He does not have the requisite skill set to take the initiative to apply for jobs, to interview effectively with potential employers, and to independently follow through with reporting for work and completing works tasks without substantial support. According to Dr. Large, these limitations are consistent with a substantial disability in the area of economic self-sufficiency.

17. Dr. Large is certified as a Neuropsychologist. She has outstanding credentials with more than 20 years of experience. She spent three days evaluating claimant and issued a thorough written report (Exhibit D). Her testimony and her opinion that claimant qualifies for regional center services was convincing. Further, Dr. Large's opinion is supported by the opinion expressed by Dr. du Verglas in her August 23, 2015 letter (Exhibit F).

18. Claimant's mother testified that the report issued by Dr. Hastings based on claimant's self-reporting is not accurate. She stated that claimant has significant problems with independent living skills. Claimant will start a chore such as doing laundry but does not come close to completing the task. He will put the clothes in the washer but does not return to dry, sort, fold and put the clothes away. This is a common result when performing tasks relating to independent living. While claimant has obtained a driver's license, he does not drive alone because he experiences significant anxiety. Claimant's mother also expressed

concern over claimant's social delays, his inability to make friends, and his inability to express his emotions. Regarding claimant's SAT score and his GPA, claimant's mother stated that claimant is given significant accommodations. Claimant was given two days to complete the SAT, which was inaccurately reported as 1480 (his actual score was 1200). Further, claimant has always been given extra time to complete school testing and assignments. Finally, claimant's mother testified that claimant is sometimes "not in touch with reality." She noted that claimant's desire to study sociology and become a therapist is not realistic. Claimant's mother's testimony is given considerable weight because she observes claimant on a daily basis.

19. Thomson Kelly, Ph.D., testified on behalf of the service agency. Dr. Kelly is the Chief Psychologist and Eligibility Manager for the Westside Regional Center. He is also part of the "eligibility team" that determined that claimant does not qualify for regional center services. As part of the eligibility team, Dr. Kelly observed approximately 30 minutes of the evaluation of claimant conducted by Dr. Hastings. Dr. Kelly testified that there were significant differences between the findings of Dr. du Verglas and Dr. Large in the area of adaptive skills. Dr. du Verglas determined that claimant was in the borderline range while Dr. Large determined that claimant was substantially impaired in the area of adaptive skills. Dr. Kelly noted that claimant's SAT and school performances show that he is not severely impaired. Finally, Dr. Kelly opined that, based on his observations of the Dr. Hastings' evaluation, Dr. Hastings' report gives a more accurate description of claimant's delays. Dr. Kelly is an experienced psychologist with outstanding credentials. However, the relatively short time that he spent observing claimant affects the weight given his opinion. This stands in contrast with the three days that Drs. Large and du Verglas each spent with claimant and his family during their evaluations of claimant. Both Drs. Large and du Verglas issued strong opinions that claimant should be found eligible for regional center services.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as a disability attributable to intellectual disability, 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.

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

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

3. 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.

4. 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.

5. Claimant has been diagnosed with Autism Spectrum Disorder, which is an eligible category for regional center services pursuant to Welfare and Institutions Code section 4512, subdivision (a). Further, the evidence established that claimant's diagnosed condition presents a substantial disability in that he has major impairments in social functioning and has functional limitations in the areas of self-care, self-direction, capacity for independent living, and economic self-sufficiency. These impairments require interdisciplinary planning and coordination of special or generic services to assist claimant in achieving his maximum potential.

ORDER

Claimant is eligible for regional center services. Therefore, the Westside Regional Center's determination that claimant is not eligible for regional center services is overruled. Claimant's appeal of that determination is granted.

DATED: February 1, 2015

_____/s/_____
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.