STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-05/18-350
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Mental Health (Department) denying his application for the Community Rehabilitation and Treatment Program (CRT). Petitioner's parents requested the fair hearing on petitioner's behalf. The issue on appeal is whether the petitioner has a diagnosis that meets the eligibility criteria for the CRT program.

The Department has filed a Motion for Summary Judgment which is opposed by petitioner. The findings below are based on the parties' motions and accompanying exhibits.

FINDINGS OF FACT

A. **SUMMARY JUDGMENT.**

1. The Department has filed a Motion for Summary Judgment with accompanying Exhibits A – H. The Motion presents the argument that petitioner is not eligible for the CRT program because he does not have a diagnosis of mental

illness that meets the program's eligibility criteria as defined in the Department's *Community Rehabilitation and Treatment (CRT) Program Designated Agency Provider Manual* (CRT Manual) (https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Manuals/CRT_manual_v4_2017-03.pdf).

2. Petitioner's counsel filed an Opposition for Motion for Summary Judgment. Petitioner's counsel did not submit a legal memorandum but attached four (4) reports from medical practitioners who have treated petitioner; counsel argues that the facts presented in these reports create a substantial dispute of fact which would preclude grating the Department's Motion, however, the facts alleged to be in dispute were not identified. Two of the reports submitted by petitioner were included in the Department's Exhibits and the Department's version of these Exhibits will be referred to in these findings. Exhibits G and H. For reference purposes, petitioner's other two (2) reports will be labeled Exhibit 1 (Clinical Psychologist letter) and Exhibit 2 (Social Worker/Clinician letter – this letter was also referred to in Department's Exhibit F).

3. Neither party objected to the Exhibits supplied by the other party. The disagreement between the parties is whether all the evidence submitted by both parties in the

form of their Exhibits establishes petitioner's eligibility for CRT services. As, based on these exhibits, there is no dispute of material facts, summary judgment is appropriate. A list of Exhibits is incorporated at the end of this decision.[1]

B. **MERITS OF APPEAL.**

4. The petitioner is currently 19 years of age (he will be 20 in July). Petitioner was adopted by his parents, along with his brother, when he was approximately 10 months old. Petitioner's medical records document that he was dropped on his head as an infant (prior to his adoption) and that his birth mother used multiple illegal drugs during the pregnancy.

5. Petitioner's Pediatrician, who has treated him since petitioner was 10 years old, states that petitioner has a traumatic brain injury (TMI) and Post-Traumatic Stress Disorder (PTSD) from early exposure to violence, has learning disabilities and Generalized Anxiety Disorder, and has very limited adaptive functioning capabilities. The Pediatrician stated that petitioner, due to his fear and anxiety, did not speak to him for many years and would initially barely allow

[1] These exhibits are not attached but are referenced for the purpose of the record and notification to the parties.

him to conduct an examination. In addition, petitioner still does not follow up on medical recommendations and does not take prescribed medications; he is behind in his immunizations apparently because he will not allow the shots to be administered. The Pediatrician describes petitioner as "very vulnerable." The Pediatrician reported that petitioner is vulnerable to exploitation and gave the example that petitioner has tried to send money to someone he met on the internet. In addition, he noted that petitioner, at times in the past, has been at risk of self-harm by cutting himself and threatening suicide, through these risks have not appeared in recent years.

6. When he became a teenager, petitioner exhibited somewhat rebellious behavior and had problems with anger. From October 2014 until 2017, he attended Meadowridge Academy, a residential school in Massachusetts.

7. The Child/Adolescent Psychiatrist who treated petitioner at Meadowridge (from October 2014 at least through the date of his report in June 2016) states that petitioner's diagnoses, as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM V) were identified as: Post-traumatic stress disorder (PTSD), unspecified neurodevelopmental disorder and mild neurocognitive disorder

due to traumatic brain injury (TBI). The Psychiatrist stated that these diagnoses resulted in impairment in perception, difficulty with reasoning, planning judgment, and problem solving. Petitioner also has anxiety, lowered self-esteem, becomes agitated, and has difficulty relating to others.

8. A Clinical Psychologist who evaluated petitioner (undated report) stated that he concurred with the findings of the Clinical Psychiatrist that petitioner has a mild neurocognitive disorder due to traumatic brain injury (TBI).

9. The Clinical Social Worker who worked with petitioner at Meadowridge stated that due to petitioner's "reality testing", rigid thinking and vulnerability for exploitation, it was recommended that he live in an environment with around-the-clock supervision.

10. Petitioner now attends a private, alternative school in Essex. Petitioner receives services (not CRT services) through the Howard Center, the agency designated by the Department to provide mental health services in the Chittenden County community. He currently lives two (2) nights a week with a Howard Center shared living provider (SLP) in a house owned by his father, spends 3 nights a week in an apartment with his brother who serves as his Personal

Care Attendant (PCA), and lives with his father in the father's home on week-ends[2].

11. All medical documentation demonstrates that petitioner needs support and supervision and that he is not capable of living independently; he does not take his medication, eat property, get exercise or go outside, go to bed on a timely basis, or maintain his hygiene without supervision. There are periods of time when petitioner will stay in bed all day due to reported anxiety. However, he does not otherwise report depression. Petitioner has periods of increased energy and decreased need for sleep. He does not report voices or other psychotic symptoms. He does not report being generally fearful of people or of going out. He appreciates having a support network.

12. In early 2018, petitioner's mother applied on his behalf for inclusion in the Howard Center's Community and Rehabilitative Treatment (CRT) program (also known as the Community Support Program). The CRT program provides a comprehensive array of services and case management for adults with a diagnosed serious mental illness. The

[2] The number of nights petitioner spends in each residence is not consistently reported in Exhibits C and H; however, it is undisputed that petitioner currently resides in (moving between) these three (3) supported residential settings.

application was denied by the Program Director on March 22, 2018 on the basis that petitioner did not have a mental health diagnosis that made him eligible for the program. Petitioner's mother filed an internal appeal and the Department arranged to conduct a second review of the application.

13. The Howard Center then conducted a Clinical Assessment on April 30, 2018. The eight-page Assessment report accepted the diagnosis shared by the Clinical Psychologist, Child Psychologist, and Pediatrician of mild cognitive disorder secondary to traumatic brain injury (TBI), unspecified neurodevelopmental disorder, and unspecified anxiety disorder. The Howard Assessment report concluded that petitioner did not have a mental health diagnosis that rendered him eligible for the CRT program and also did not meet "treatment history criteria" for the program. The Assessment was signed by the Howard Center's Medical Director, who is a Psychiatrist, on May 1, 2018. The petitioner was mailed notice of the denial and his right to request a fair hearing on May 2, 2018. This appeal followed.

14. The Department describes the CRT program as the highest level of outpatient care available for a mentally ill individual. Eligibility for the CRT program is set forth in

the Department's CRT Manual. Three (3) eligibility criteria are identified: (1) a qualifying mental health diagnosis, (2)a treatment history that demonstrates need for substantial treatment supports, and (3) a functional status of severe functional impairment in life skills. The Department's Motion is premised on petitioner's failure to meet the first eligibility criteria (which serves as a basis for the remaining two criteria) of having a mental health diagnosis that makes him eligible for the program. The list of qualifying diagnoses identified in the Manual is as follows:

> 1.3 CRT Eligibility Criteria
>
> CRT eligibility requires demonstration of a severe, persistent mental illness that has not responded to less intensive treatment (i.e. history of substantial treatment needs) and has resulted in significant functional disability. All three of the following criteria must be met for CRT enrollment.
>
> **Mental Health Diagnosis**
>
> To meet eligibility for enrollment into the CRT program a person must have one of the following qualifying diagnoses meeting DSM-V criteria.
>
> * Schizophrenia
> * Schizophreniform Disorder
> * Schizoaffective Disorder
> * Delusional Disorder
> * Unspecified schizophrenia spectrum and other psychotic disorders
> * Major Depressive Disorder
> * Bipolar I Disorder
> * Bipolar II Disorder, and other specified bipolar and related disorders

* Panic Disorder
* Agoraphobia
* Obsessive-Compulsive Disorder, including hoarding disorder, other specified obsessive-compulsive and related disorders, and unspecified obsessive-compulsive and related disorders
* Borderline Personality Disorder.

The eligibility process requires that all other contributing diagnoses be referenced including substance use disorders. It is expected that the CRT program will competently treat co-occurring substance-related disorders.

* * *

CRT Manual §1.3 CRT Eligibility Criteria, pps. 4-5.

15. None of the evidence presented demonstrates that petitioner has been diagnosed with any of the listed diagnoses. Here, the medical experts, the Department's Psychiatrist, the petitioner's former treating Child Psychiatrist, a Clinical Psychologist, and his Pediatrician all agree that petitioner's difficulties relate to his early TBI and the unspecified neurodevelopmental and neurocognitive disorders that relate to that injury, as well as PTSD.

ORDER

The Department's Motion for Summary Judgment is granted.

REASONS

The Board's review of the Department's decisions is de novo. Petitioner has not previously received CRT services; therefore, the petitioner has the burden of showing that the Department's decision is contrary to its regulations. Fair Hearing Rule 1000.3(O)(4). Fair Hearing No. N-12/09-642 (burden to prove eligibility for CRT program lies with the petitioner).

The parties agree that petitioner is a person who suffered a TBI as an infant that has left him with a complex set of symptoms and that he has been receiving supervised residential and educational care in order to meet his needs.

However, CRT program eligibility is limited to those who have specific mental health diagnoses as provided in the CRT Manual. Exhibit G. *See also* Fair Hearing No. N-12/09-642 [CRT program eligibility premised on evidence of identified mental health diagnosis]. Petitioner has not presented any evidence that he meets any of the listed diagnoses.

As the undisputed evidence demonstrates that petitioner does not meet the diagnosis requirement of the CRT program, summary judgment is appropriate and the underlying decision that petitioner is not eligible for CRT services must be

affirmed. *See* V.R.C.P. 56; Fair Hearing No. A-11/08-522.

See also 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

List of Exhibits

Exhibit A.	Initial CRT denial letter dated 3/22/18.
Exhibit B.	Grant of internal appeal letter dated 4/13/18.
Exhibit C.	Howard Center Clinical Assessment conducted 4/30/18.
Exhibit D.	Howard Center final denial letter dated 5/2/18.
Exhibit E.	DMH Community Rehabilitation and Treatment (CRT)Program Designated Agency Provider Manual, dated March 2017, Table of Contents - p. 7. https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Manuals/CRT_manual_v4_2017-03.pdf
Exhibit F.	Petitioner's counsel's letter to Department dated 11/27/18.
Exhibit G.	Letter from petitioner's former Child Psychiatrist dated 6/17/16.
Exhibit H.	Letter from petitioner's Pediatrician dated 7/12/18.
Exhibit 1.	Letter from Clinical Psychologist (undated).
Exhibit 2.	Letter from petitioner's former Clinical Social Worker dated 3/17/17.

Appendix A

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