

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016020343

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 22, 2016.

Lee Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant.

The matter was submitted on March 22, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 5, 2016, IRC notified claimant, an 11-year old boy, that he was

not eligible for regional center services because the records he provided to IRC did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment as an individual with an intellectual disability.

2. On February 6, 2016, claimant's mother and IRC representatives attended an informal meeting. Claimant's mother outlined the reasons she believed claimant qualified for regional center services. IRC reviewed the records and discussed the content of the records with claimant's mother. IRC adhered to its original determination that claimant was not eligible for regional center services.

3. On January 12, 2016, claimant filed a Fair Hearing Request appealing IRC's determination and this hearing ensued.

DIAGNOSTIC CRITERIA FOR AUTISM

4. The (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria includes persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services under autism.

EVIDENCE PRESENTED AT HEARING

5. Sandra Brooks holds a Ph.D. in clinical Psychology and has been a staff psychologist at IRC for nine years. Dr. Brooks testified at the hearing.

6. Dr. Brooks reviewed claimant's medical records, which included the following: a psychiatric evaluation and supporting documents from Victor Community

Support Services, a psychological assessment completed by the San Bernardino County Department of Behavioral Health, a psychological assessment completed by the California Department of Education Diagnostic Center in Redlands, and various school records regarding claimant's eligibility and participation in the special education program.

7. According to Dr. Brooks, autism is a developmental disability characterized by significant impairments in social communications, repetitive stereotype behaviors, and sensory issues that originated during the developmental period. Based on her review of claimant's records, she did not believe that claimant suffered from autism. Dr. Brooks noted that the records contained findings and diagnoses of emotional disturbance, attention deficit hyperactivity disorder, and schizophrenia. However, none of the documents she reviewed contained a diagnosis of autism. Dr. Brooks testified that, although some symptoms of autism resemble schizophrenia, the psychological assessment completed by the California Department of Education Diagnostic Center in Redlands specifically ruled out autism.

Furthermore, Dr. Brooks stated that delusions and hallucinations suffered by claimant are consistent with schizophrenia but are inconsistent with autism. In other words, a person suffering from autism would not typically experience delusions and hallucinations.

Dr. Brooks concluded that claimant did not meet the criteria for regional center services based on the records presented.

8. Claimant's records showed that claimant suffered from emotional disturbance, schizophrenia, and attention deficit hyperactivity disorder. There were notations in some of the school records that claimant, at one point, may have been diagnosed with Asperger's Syndrome¹, but the records did not contain any supporting

¹ Asperger's Disorder is a developmental disorder characterized by significant

documentation or testing to substantiate that diagnosis. Overall, the records supported Dr. Brook's testimony and conclusion that claimant did not qualify for regional center services.

A psycho-educational report included in claimant's school records showed that Kimberly Clark, Ed. S., assessed claimant for special education services in September 2009, when claimant was seven years old. She conducted twelve separate assessments, tests, and clinical observations. Ms. Clark concluded claimant was hyperactive, anxious, depressed, and at-risk for a mood disorder. His academic achievement was in the average range for most subjects and the low-average range for numerical operations and oral expression. Ms. Clark concluded that claimant may suffer from a learning disability.

The Diagnostic Center report was completed in November 2014 when claimant was nine years old. The assessment included a transdisciplinary team comprised of an education specialist, a speech-language pathologist, a pediatrician/clinical geneticist, and a clinical psychologist. The team conducted a wide range of assessments over a period of one week that were specifically designed to measure claimant's cognitive ability, adaptive behavior, social and emotional adaptations, communication skills, expressive language skills, speech production, and pragmatics. The team concluded the following:

In response to [claimant's] current bizarre presentation, frequent mood swings, and tantrum-like behaviors, the following diagnosis best describes [claimant's] behaviors and symptoms.

difficulties in social interaction and nonverbal communication, along with restricted and repetitive patterns of behavior and interests. The syndrome had its own classification under the DSM-4 TR, but was incorporated into the definition of autism under the DSM-5.

Claimant currently meets the criteria for schizophrenia with childhood onset (occurs at age 12 years or younger). His level of cognition generally falls in the average range with a various pattern of strengths and weaknesses. Thus, his symptoms cannot be better explained by his level of cognitive functioning. The onset of psychotic symptoms appeared insidious and the behaviors may have been misattributed to mood dysregulation, autistic-like, hyperactivity or inattention. Based on history provided and current levels of functioning, claimant is currently exhibiting positive symptoms of schizophrenia, which include disorganized behaviors and speech, delusions, and hallucinations. His delusions and hallucinations appeared less elaborate than adult psychosis, but far more complex and substantial than simply fantasy play or imagination. He also presents with negative symptoms of schizophrenia, which included blunted affect [and] diminished emotional expression. [T]hrough diagnostic interviews with [claimant's mother] and [claimant], it appears that he never returns to normalcy, but rather his odd behaviors vary in intensity and severity.

The team concluded that claimant's primary "handicapping" condition was emotional disturbance, which qualified him for special education services.

The most recent psychological report, completed by the San Bernardino County Department of Behavioral Health on September 3, 2015, showed claimant struggled with irritable moods, feelings of sadness, and problems understanding reality. Claimant

struggled with his emotions and was always “on edge.” Although claimant was diagnosed with anxiety disorder, attention deficit hyperactivity disorder, and several other disorders, there was no finding that claimant was diagnosed with autism under the DSM-5. The psychiatric evaluation and supporting documents from Victor Community Support Services was in accord with the assessment from the San Bernardino County Department of Behavioral Health.

9. No evidence was presented on behalf of claimant, as claimant did not appear and nobody appeared on claimant’s behalf².

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole

² The jurisdictional documents showed that claimant’s mother was properly served and notified of the hearing date and time.

communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

3. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as 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." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

4. California Code of Regulations, title 17, section 54000, provides:

(a) 'Developmental Disability' means a disability that is attributable to mental retardation³, cerebral palsy, epilepsy, autism, or disabling conditions found to

³ Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations

be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

- (1) Originate before age eighteen;
- (2) Be likely to continue indefinitely;
- (3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

- (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
- (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.
- (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation."

5. California Code of Regulations, title 17, section 54001, provides:

(a) 'Substantial disability' means:

has not been amended to reflect the currently used terms.

- (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.
- (b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.
- (c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that

- they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.
- (d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

EVALUATION

6. The burden was on claimant to establish his eligibility for regional center services. None of the documents introduced in this hearing established that claimant had autism. Indeed the documents showed quite the contrary; they appeared to establish that claimant suffers from a psychiatric disorder, or other psychological conditions relating to emotional difficulties, anxiety, and hyperactivity. These conditions do not qualify claimant for services under the Lanterman Act.

ORDER

Claimant's appeal from the Inland Regional Center's determination that he is not eligible for regional center services and supports is denied.

DATED: April 4, 2016

KIMBERLY J. BELVEDERE

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 ninety days.