

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016020834

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 5, 2016.

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

There was no appearance by or on behalf of claimant.

The matter was submitted on April 5, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act as a result of an intellectual disability?

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. On January 6, 2016, IRC notified claimant that he was not eligible for regional center services because the records claimant 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 needs as an individual with an intellectual disability.

2. On March 25, 2016, IRC representatives and claimant's representative attended an informal meeting. Claimant's representative discussed the reasons why he believed claimant had an intellectual disability and qualified for regional center services. According to the information provided, and supported by medical and school records, claimant had been diagnosed with Emotional Disturbance and Specific Learning Disorder. The records also demonstrated that claimant may have an auditory processing disorder that contributed to his learning difficulties. Claimant was recently prescribed hearing aids.

3. Following the informal meeting, IRC adhered to its original determination that claimant was not eligible for regional center services because Emotion Disturbance and Specific Learning Disorder were not conditions that qualify an individual to receive regional center services under the Lanterman Act.

4. On February 8, 2016, through his authorized representative, claimant filed a Fair Hearing Request, appealing IRC's determination and requesting a hearing. This hearing ensued.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

5. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains the diagnostic criteria used to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-

cultural standards for personal independence and social responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range.

The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socioculturally matched peers.

EVIDENCE PRESENTED AT HEARING

6. Veronica Ramirez, Ph.D., a staff psychologist at IRC, testified at the hearing. Dr. Ramirez reviewed claimant's records, which included multiple individualized educational program data summaries (IEP's); a psycho-educational assessment report completed in November 2014 by Andrea Calvert, Ed.S., claimant's school psychologist; and a psychological assessment completed by Kerry Hannifin, D. Psy, on October 2, 2015.

Dr. Ramirez explained that, based on claimant's school records, he qualified for special education services based on a diagnosis of Emotional Disturbance and Specific Learning Disability. She also noted that claimant has previously been diagnosed with attention deficit hyperactivity disorder and bipolar disorder. Dr. Ramirez explained that these conditions could cause "false lows" on intelligence testing because ability to concentration on intelligence tests would be affected based on his particular mood at the time. In other words, because the conditions might interfere with his testing ability, the resulting scores could be much lower than his true intellectual ability.

Regarding the psycho-educational assessment completed by claimant's school psychologist, Dr. Ramirez stated that the IQ scores yielded as a result of the Kaufman Brief Intelligence Test (KBIT) were inconsistent with a person who is intellectually disabled. The KBIT measures verbal and non-verbal functioning. While claimant scored below average in the verbal domains, he scored within the average range in non-verbal domains. The KBIT

results indicated that claimant possessed strong non-verbal cognitive abilities.

Similarly, claimant's results on the Woodcock Johnson III Normative Update Tests of Achievement were inconsistent with a person who is intellectually disabled because the low scores on the Woodcock Johnson test did not correlate with the results of the KBIT. In other words, there was a large discrepancy between the verbal and non-verbal scores; thus, the results of the tests could not be explained by intellectual disability. Dr. Ramirez hypothesized that the variance in claimant's scores might be better explained by his other known disabilities, including his recently diagnosed auditory disability.

Dr. Ramirez concluded that, based on the records she reviewed, claimant did not qualify for regional center services.

THE RECORDS

7. Claimant's records supported Dr. Ramirez's testimony.

8. Claimant's IEP's and the psycho-educational assessment completed by claimant's school psychologist depict a child with severe emotional disturbance and bipolar disorder. The psycho-educational assessment recounted incidents involving claimant attempting to smother his younger brother with a pillow and threatening to kill himself with a knife. In addition to the problems already noted, the assessment also reported that claimant suffered from Reactive Attachment Disorder and severe behavioral problems. In sum, the records showed claimant's low performance in school was not the result of an intellectual disability; rather, it is attributable to his inability to focus and concentrate as a result of a combination of disorders that do not qualify claimant to receive regional center services under the Lanterman Act.

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.

3. 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 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.

4. 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.

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

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation¹, cerebral palsy, epilepsy, autism, or disabling conditions found to 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

¹ Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replace it with “intellectual disability,” the California Code of Regulations has not been amended to reflect the currently used terms.

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."

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

(a) 'Substantial disability' means:

(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

7. Claimant had the burden to establish that he is eligible for regional center services. Claimant introduced no evidence that proved he was eligible to receive regional center services. Based on the records provided to IRC and the testimony of Dr. Ramirez, claimant does not have an intellectual disability and is thus ineligible 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 is denied.

DATED: April 14, 2016

_____/s/_____

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.