

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016100936

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on November 28, 2016.

Claimant personally appeared and was represented by her mother.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

ISSUE

Must IRC perform an intake and assessment due to claimant's assertion that she has Autism Spectrum Disorder (ASD)?

FACTUAL FINDINGS

JURISDICTION

1. Claimant, a 22-year-old female, was referred to IRC by the Department of Rehabilitation. Claimant contacted IRC and requested an intake evaluation. After reviewing medical records and past evaluations of claimant, the IRC interdisciplinary

team concluded that: "no 'intake' services can be provided at this time, because the records did not show that you have a disability that qualifies you to receive IRC services." (Exh. 1) Claimant timely filed a Fair Hearing Request and the instant hearing ensued.

#### EVIDENCE CONCERNING CLAIMANT'S CONDITION(S)

2. Dr. Paul Greenwald, Ph.D., the IRC Staff Psychologist who performed a complete records review concerning claimant, testified that the information contained in claimant's records revealed that she does not have ASD and that she is not "substantially disabled."

3. Claimant's Individualized Education Program (IEP) report, dated May 22, 2006, listed claimant's disability as "Emotional Disturbance." The report noted that claimant, then almost 12 years old, was being treated for "a possible mood disorder" through Riverside County Mental Health Services. Additionally, the IEP noted that claimant "demonstrates skills appropriate for her age/grade as compared to her peers," she "is a well behaved student, follows school rules and policies," "requires little to no redirection to stay on task," and "gets along well with other students and adults." (Exh. 4)

4. A more recent IEP, dated February 9, 2012, indicated that claimant's primary disability was "Autism"; however Dr. Greenwald testified that the information contained in the IEP revealed that claimant did not have ASD. For example, in the "Communication Development" section of the report it was noted that claimant "has good expressive and receptive communication skills with no concerns" and "although [claimant] is shy, she is not afraid to answer or ask questions when needed." According to Dr. Greenwald, such behaviors are "not consistent with ASD" and "indicates against this diagnosis." (Exh. 5) Moreover, a school providing services to a student under an autism disability is insufficient to establish eligibility for regional center services. Schools

are governed by California Code of Regulations, Title 5 and regional centers are governed by California Code of Regulations, Title 17. Title 17 eligibility requirements for services are much more stringent than those of Title 5.

5. A Riverside County Department of Mental Health Medication Service Plan covering the period from February 28, 2006, through January 31, 2007, noted that claimant was being medicated to treat "paranoia, voices [auditory hallucinations], [and] agitation." There was no mention of ASD. (Exh. 6) According to Dr. Greenwald, "these symptoms are not specific to Autism."

6. Documents that were attached to the 2006 medication plan (Finding 5) revealed that claimant's mother described claimant's developmental history as follows: "Mother reports client was born prematurely at the 8<sup>th</sup> month of pregnancy due to late complications. Client however was healthy during infancy/early childhood. Developmental milestones (ambulation, toilet training) were reached at appropriate times with no significant delays. Client however did not develop speech until the age of four after receiving speech therapy for a year." The Academic Functioning section of the documents noted that claimant was getting good grades (A's and B's) in her sixth-grade special education classes, did not display "any behavioral problems," was "able to follow directions," was "compliant toward authority figures and school personnel," and "might be able to attend regular classes next year." Finally, the document contained the following statements attributed to claimant: "Client states it is difficult for her to control her temper at times and client tends to be explosive when frustrated or angry. Client also expressed she is a serious type of person and sometimes people think she is odd because of this. Client states it is very difficult for her to talk to strangers and initiate conversation/relationships." (Exh. 7) According to Dr. Greenwald, such introspection and self-awareness is "inconsistent with Autism."

7. There were several other reports that Dr. Greenwald reviewed in preparation for his testimony. Dr. Greenwald was not the psychologist on the IRC team that had previously reviewed the reports that were received in evidence during the instant hearing. Dr. Greenwald, however, agreed with the team's conclusion that claimant did not qualify for intake/services. The documents revealed that claimant had bouts of insomnia, depression, anxiety, labile mood, auditory hallucinations, paranoia accompanied with withdrawal and avoidance, and possibly Asperger's (aka "high-functioning autism,") which is, according to Dr. Greenwald, "not part of the DSM 5." As Dr. Greenwald noted, "there was no clinical diagnosis of Autism" in any of the documents and the information contained in the documents was more consistent with claimant having a "mood disorder."

8. Claimant was present for the entire hearing and appeared very attentive. She did not exhibit any self-stimulating or repetitive behaviors. In fact, at the appropriate time in the hearing, during her case-in-chief, claimant asked to make some comments. Claimant then testified that Dr. Greenwald's testimony and the documents presented during the hearing "makes me think I have other problems – not Autism."

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

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

'Developmental disability' means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. Welfare and Institutions Code section 4642, subdivision (a)(1) provides, in part: "Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional center." (Underline added.)

#### EVALUATION

5. The only competent evidence presented established that claimant does not have a developmental disability. Consequently, IRC properly denied her request for intake services and assessments.

#### ORDER

Claimant's appeal is denied.

Dated: December 9, 2016

---

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**