

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016081158

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 24, 2017.

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

Claimant's father appeared on behalf of claimant. Claimant's mother was also present. Claimant did not appear.

The matter was submitted on January 24, 2017

ISSUE

Is IRC's original determination finding claimant eligible for regional center services under a diagnosis of intellectual disability clearly erroneous in light of IRC's recent comprehensive reassessment?

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. Claimant is a seven-year-old girl receiving regional center services as a result of a 2013 diagnosis by IRC of intellectual disability.
2. On August 11, 2016, IRC notified claimant that she was no longer eligible for regional center services under a diagnosis of intellectual disability because its original determination finding claimant eligible for regional center services is clearly erroneous due to results yielded by a recent comprehensive reassessment of claimant.
3. On August 25, 2016, claimant's father – her authorized representative – filed a fair hearing request appealing IRC's determination. This hearing ensued.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

4. 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

5. Sandra Brooks, Ph.D., testified on behalf of IRC. Dr. Brooks is a licensed clinical psychologist and regularly performs assessments to determine whether a claimant is eligible for services under the Lanterman Act.

6. Dr. Brooks reviewed claimant's file, which contained two Individualized Education Plans completed in 2013 and 2015; a multi-disciplinary report completed by claimant's school psychologist in 2013; IRC's original psychological evaluation completed in 2013; and a psycho-educational assessment report completed by claimant's school psychologist in 2015.

Dr. Brooks explained that claimant's 2013 records showed claimant functioning at average and low average levels. She initially began receiving special education services in 2013 under a diagnosis of intellectual disability. Dr. Brooks did not dispute IRC's original determination finding claimant eligible for services based on a diagnosis of intellectual disability. However, she noted that as a child ages, the child's adaptive and intellectual abilities become more clear, and often render the earlier diagnosis of intellectual disability clearly erroneous. In other words, it can be difficult to assess a young child for a variety of reasons, but as a child matures, the ability to assess improves and can yield different results. She noted that IRC's 2013 assessment documented claimant's inability to focus and pay attention during the assessment, such that the IRC psychologist administering the assessments recommended a new assessment be conducted in two years in order to obtain a better assessment of claimant's intellectual abilities.

Claimant's school and regional center records from 2015 showed she had significant difficulties focusing on tasks and paying attention. The records reflected that some assessments could not be completed because of claimant's inattention. Claimant's school records showed her intellectual abilities ranged from average to low average, and the school psychologist concluded claimant no longer met the special education criteria for intellectual disability. Claimant's school district changed her service category from intellectual disability to other health impairment in 2015.

Dr. Brooks completed a comprehensive psychological assessment of claimant on November 15, 2016. She administered the Wechsler Intelligence Scale for Children – 5th Edition (WISC-5) and the Vineland Adaptive Behavior Scales – 2nd Edition. Claimant's overall score on the WISC-5, which measured claimant's intellectual functioning, placed her in the borderline range. Claimant's scores on the Vineland, which measured her adaptive functioning, placed her in the average to low average range.

Dr. Brooks concluded, based on her comprehensive reassessment and a review of claimant's records, as well as an interview with claimant's parents and clinical observations, that claimant did not have an intellectual disability. She explained that intellectual disability is a lifelong condition; the improvement of a person's abilities over time such that he or she is no longer in the deficit range is not characteristic of an intellectual disability.¹ Thus, claimant is no longer eligible for regional center services.

7. Dr. Brooks's testimony was consistent with what was reflected in claimant's records.

¹ Although Dr. Brooks did not test for Attention Deficit Hyperactivity Disorder, she noted that claimant would benefit from such a test because claimant experienced difficulty paying attention and remaining focused during the assessments.

8. Claimant's father testified regarding claimant's abilities. According to claimant's father, claimant is not suited for special education classes; they did more harm than good because of the abilities of the children in those classes. However, when claimant's parents pulled her out of special education classes and placed her in a regular classroom, claimant's performance was substandard.

Claimant's father expressed frustration in not being able to find help for his daughter. He reiterated many times that "eligibility" for services is not the reason he appeared at the fair hearing; rather, he simply wanted guidance as to what he should do with his daughter in order to help her excel academically. Claimant's father agreed with the reports and assessments that his daughter has difficulty paying attention, and did not necessarily disagree that she did not suffer from an intellectual disability. However, claimant is not performing well in her classes and he hoped that IRC could provide some assistance as to what he and his wife should do.²

LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for

² Off the record following the conclusion of the hearing, claimant's parents discussed various options that might be helpful to assist claimant with her education, including obtaining an assessment to rule out ADHD.

services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

3. In a proceeding to determine whether a previous determination that an individual has a developmental disability "is clearly erroneous," the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish by a preponderance of the evidence that its previous eligibility determination "is clearly erroneous."

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 also 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.*)

//

5. 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

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.

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

Regulations has not been amended to reflect the currently used terms.

- (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. The original determination by IRC finding claimant eligible for regional center services under a diagnosis of intellectual disability, is clearly erroneous, in light of Dr. Brooks's comprehensive reassessment and other documentary evidence presented at hearing. Although claimant was initially diagnosed with an intellectual disability, as she progressed in age, the records showed claimant has varying degrees of intellectual ability. Additionally, according to both her school and Dr. Brooks, claimant's intellectual ability appears to be affected by her inability to remain focused on a specific task. Indeed, even claimant's school changed her eligibility for special education from intellectual disability to "other health impairment" to reflect this reality. Overall, the comprehensive reassessment completed by Dr. Brooks did not show claimant had deficits that warranted a diagnosis of intellectual disability. Moreover, as claimant's father explained, claimant functions at a higher level than that required for special education classes, but has difficulty excelling in mainstream classes due to her inability to focus. Claimant, it appears, falls somewhere in between.

Claimant's father's testimony was straightforward, thoughtful and credible. His desire to do what is best for his daughter and obtain the best placement for her so she can excel in her academic endeavors was heartfelt and sincere. However, for the above reasons, claimant is no longer eligible for regional center services because the original diagnosis of intellectual disability is clearly erroneous in light of the evidence presented.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services is denied.

DATED: January 30, 2017

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.