

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020475

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 22, 2017.

Leigh-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 March 22, 2017.

ISSUE

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 26, 2017, 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 January 31, 2017, 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

3. 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

4. IRC provided claimant's records, which included a 2016 individualized education plan showing claimant receives special education services based on a diagnosis of emotional disturbance and specific learning disability; a 2015 individualized education plan addendum showing claimant receives special education services based on a diagnosis of emotional disturbance and specific learning disability; and a 2015 psychoeducational assessment showing claimant qualifies for special education services as a result of emotional disturbance and specific learning disability.

5. No records provided showed claimant has an intellectual disability.

6. Claimant's authorized representative did not appear at the hearing. According to IRC, at approximately 9:30 a.m. the morning of the hearing, claimant's authorized representative called IRC and told them he was not appearing and was withdrawing the fair hearing request. Claimant's authorized representative hung up the phone and did not speak with Ms. Pierce. Prior to commencing the hearing, multiple attempts were made to contact claimant's authorized representative telephonically, to no avail. OAH did not have any record of a request for a continuance or a written withdrawal of the fair hearing request. Claimant's authorized representative did not provide a written withdrawal of the fair hearing request to IRC. Claimant's authorized representative did not ask for a continuance.

7. Based on a review of IRC's correspondence with claimant's authorized representative, a finding is made that service of the notice of hearing was proper. By not appearing at the hearing and not filing a written withdrawal of the fair hearing request, claimant is in default.

## 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.

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation<sup>1</sup>, 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

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<sup>1</sup> 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.

- 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:
- (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 did not appear at the hearing. The records previously provided by claimant do not support a finding that claimant has an intellectual disability as it is defined in the DSM-5. Accordingly, claimant is 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: March 24, 2017

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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.**