

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2019040804

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 21, 2019, in San Bernardino, California.

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

Max Ortega, Attorney at Law, represented claimant, who was present with his mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 21, 2019.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Intellectual Disability?

FACTUAL FINDINGS

Background

1. On March 20, 2019, IRC sent claimant's mother a Notice of Proposed Action stating that claimant, a 20-year-old man, was not eligible for regional center services because the records provided to IRC did not establish that claimant 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 April 4, 2019, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination.

3. On May 2, 2019, claimant's mother, representatives from IRC, and claimant's attorney attended an informal meeting to discuss claimant's Fair Hearing Request. IRC sent claimant's attorney a letter memorializing the meeting following its conclusion. The letter stated, in part:

Claimant's mother reported that claimant requires assistance with laundry, cooking, and budgeting money. She reported that claimant is currently receiving 24 hours a month of In-Home Supportive Services (IHSS) to assist him

with his self-care needs and that he is in the process of applying for Supplemental Social Security Income (SSI) through [the] Social Security Administration.

Inland Regional Center (IRC) initially made its eligibility decision based off records review. The records provided at the time did not warrant testing or establish evidence of eligibility. Claimant had a psychological assessment conducted by Dr. Emin Gharibian with Gunn's Psychological on January 11, 2019, at the age of 20. According to Dr. Gharibian'[s] report, claimant was diagnosed with Mild Intellectual Disability. Yet, the records do not indicate that any school records or records before claimant turned 18 were reviewed. As one of the qualifying criteria for regional center eligibility, there needs to be an established diagnosis or belief that there was a diagnosis prior to the age of 18.

In contrary, claimant's school records show that his cognitive functioning levels were in the low average range prior to turning 18. According to claimant's 2016 Individualized Education Program (IEP) report, he was receiving special education services under the diagnosis of Emotional Disturbance and Specific Learning Disability, which are not qualifying [diagnoses] for regional center services.

The records and claimant's mother also reported that claimant began exhibiting signs and symptoms of psychosis

when he was 16 or 17 years old, which could have had an impact on his cognitive abilities. For regional center eligibility, the developmental disability, shall not include handicapping conditions that are solely psychiatric or solely learning disabilities in nature. . . .

4. Following the informal meeting, IRC adhered to its determination that claimant was not eligible for regional center services.

Diagnostic Criteria for Intellectual Disability

5. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of 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 socio-culturally matched peers.

Expert Testimony and Claimant's Records

6. Holly Miller, Psy.D., is a staff psychologist at Inland Regional Center. She obtained her Doctor of Psychology in 2009, and already held a Master of Science in Psychology and Bachelor of Arts in Psychology. Dr. Miller has served in a variety of positions, including clinical supervisor where she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals, and has won awards in her field. Dr. Miller also has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Miller is an expert in the field of psychology, and specifically, the diagnosis of intellectual disability.

7. Dr. Miller reviewed claimant's records, which included: a psychoeducational report dated November 29, 2006; a psychoeducational report dated October 21, 2009; a psychoeducational triennial review dated October 12, 2012; a multidisciplinary psychoeducational assessment dated October 14, 2015; claimant's September 6, 2016, Individualized Education Program plan (IEP); a neuropsychological assessment report dated January 11, 2019, conducted by Emin Gharibian, Psy.D.; a comprehensive vocational evaluation report dated April 9, 2019; and a psychological assessment completed by Gene Berg, Ph.D., on May 30, 2019. The following is a summary of Dr. Miller's testimony and the reports.

8. The November 29, 2006, psychoeducational report was conducted by Cynthia Miller, Ph.D., when claimant was eight years old. Dr. C. Miller observed hyperactivity, impulsivity, and Attention Deficit Hyperactivity Disorder (ADHD) related

concerns during claimant's assessment. Dr. C. Miller administered the Wechsler Intelligence Schedule for Children – Fourth Edition (WISC-4), which showed claimant's cognitive abilities were highly variable, in that they ranged from low average to average, with one subset testing in the borderline deficient range. This is not normally what one would expect to see in a person with an intellectual disability; to the contrary, the scores should be consistently low across all domains. Similarly, on the Woodcock Johnson Tests of Achievement, Third Edition (WJ-3), which Dr. C. Miller also administered, claimant was performing in the average range overall in math and spelling and the high average range in reading and writing. Based on Dr. C. Miller's observations, she also noted claimant's adaptive functioning to be "age appropriate." At the conclusion of the assessment, Dr. C. Miller opined that the discrepancy between claimant's abilities and actual performance was attributable to processing deficits in auditory, visual, visual motor, and attention areas. She found claimant eligible for special education services under the category of specific learning disability.

9. The October 21, 2009, psychoeducational report, also completed by Dr. C. Miller, reached similar conclusions to the previous 2006 psychoeducational report, regarding claimant's overall challenges being related to auditory and visual processing deficiencies, as opposed to an intellectual disability. By this time, claimant was 11 years old. According to various achievement tests, claimant's academic performance in reading and writing was noted as average, and his achievement in math and spelling was noted to be low average. Overall, claimant's academic performance was observed to be in the borderline deficient range. However, the deficiencies were attributed to auditory and visual processing problems, as opposed to a developmental disability. Similarly, claimant's adaptive skills were determined to be "age appropriate." He was found eligible for special education services under the category of specific learning disability.

10. When claimant was 14 years old, his school district completed a psychoeducational triennial review on October 12, 2012. On the WISC-4, claimant was found to be in the low average range of cognitive abilities. Claimant's phonological processing skills (hearing) were extremely variable, ranging from the low to high average range on multiple different tests. On the visual processing tests, claimant scored from the extremely low to average range. On the WJ-3, claimant scored within the average to low average range of cognitive abilities. Again, claimant was found eligible for special education services based on specific learning disability. The school also specifically noted that claimant's deficits were "not the result of limited school experience, [intellectual disability], visual, hearing, motor impairment, or emotional disturbance and cannot be exclusively attributed to environmental, cultural, and/or economic disadvantage or differences at this time."

11. When claimant was 17 years old in 2014, his school completed a multidisciplinary psychoeducational assessment. By history, this assessment showed claimant was diagnosed with Attention Deficit Disorder (ADD) in 2007. Claimant's full-scale I.Q. was shown to be 72. Despite some decline in his scores from previous assessments, claimant still tested mostly in the low average range. The assessment reported that claimant needs stimulation to complete the tasks requested of him. As with previous assessments, claimant again showed a significant difference between ability and achievement. Claimant continued to show deficits in auditory and visual processing. Claimant's school again found him eligible for special education under the category of specific learning disability, but not based on an intellectual disability.

12. A September 6, 2016, IEP showed claimant still qualified for special education services under specific learning disability, but also added the category of emotional disturbance. Dr. Miller explained that, in persons who truly have an

intellectual disability, their cognitive abilities remain consistent over time. In other words, they typically do not decline. Given claimant's decline in cognitive functioning over the years, and variability among different skills, a mental health condition would be the more likely explanation.

13. On January 7, 2019, when claimant was 20 years old, Dr. Gharibian completed a neuropsychological assessment. This assessment, unlike the others, began to reflect that claimant may have been suffering from a mental health disorder. Claimant reported that he hears voices and talks back to them. Claimant reported seeing a ghost. Claimant's prescription history showed he was taking Seroquel, which is a drug used to treat psychosis. The assessment noted that claimant began seeing a psychiatrist in 2018 for possible "psychotic symptoms." Multiple tests were given to review claimant's cognitive and adaptive functioning. As with previous assessments, the results were extremely scattered across all domains. Nonetheless, Dr. Gharibian concluded claimant did not exhibit any symptoms of psychosis, and diagnosed him with mild intellectual disability.

Dr. Miller explained that the assessment was not indicative of intellectual disability. She noted that since claimant was taking Seroquel, the drug likely depressed any symptoms of psychosis. Moreover, the scores being as scattered as they were was not indicative of an intellectual disability. Most concerning was that nowhere in the report did it explain what reports or previous documents were reviewed, as in order to diagnose Intellectual Disability under the DSM-5, one must review prior reports because the onset of the disorder must exist prior to age 18. Finally, Dr. Miller explained that when someone functions in the average or low average range for most of their developmental years, and then cognitive or adaptive abilities decline as an

adult, it is not the result of an intellectual disability. Rather, mental health or other psychological conditions are more likely the cause.

14. The April 9, 2019, Comprehensive Vocational Evaluation Report, which was intended to evaluate claimant's vocational abilities, showed claimant's primary disabilities as "schizophrenia and ADHD." Claimant filled out a State of California Health Questionnaire as part of the evaluation. He reported his disabilities as learning disabilities, ADHD, and schizophrenia, among other medical conditions. Later in the report, it noted claimant experiences hallucinations. Ultimately, the report concluded claimant's overall job skills were in the very low to below average range. The report, without regard to the criteria for regional center eligibility, noted that claimant would benefit from regional center services.

15. The most recent evaluation was a psychological assessment completed on May 30, 2019, by Dr. Berg, when claimant was 20. It noted that reports Dr. Berg reviewed showed claimant had been diagnosed with schizophrenia, Attention Deficit Disorder, lower intellectual abilities, and a learning disorder. Ultimately, Dr. Berg's diagnostic impressions were ADD, Combined, and Unspecified Neurodevelopmental Disorder. Neither of those conditions qualifies a person for regional center services.

16. Based on the totality of the records, Dr. Miller concluded claimant did not meet the diagnostic criteria under the DSM-5 for Intellectual Disability. Thus, claimant was deemed ineligible for regional center services.

Claimant's Mother's Testimony

17. Claimant's mother's testimony is summarized as follows: claimant has always lived with her. She is hoping for services because claimant needs assistance. In her opinion, claimant qualifies because other people have made recommendations

that he does. Claimant's mother first noticed his intellectual disability because he was a little slow developing (i.e., walking and crawling after age one). In school, claimant has never been independent. Most of the time she has to help him with his studies.

Claimant does not have any friends. Claimant's mother has one younger son who just turned 17 years old. Claimant and his younger brother do not really have a relationship. Even when they go to dinner as a family, nobody really talks. This has not always been the case; when the siblings were younger they did interact more. However, when claimant turned about 15 or 16, the interaction deteriorated. Claimant's mother attributes it to both of their personalities.

Claimant's attitude when he is out of the house is very isolated; he does not talk to people. When claimant is at home, claimant's mother always has to remind him to brush his teeth, have lunch, and engage in other daily activities. Claimant's mother has to give him simple, directed instructions. Claimant's mother will let him pay for things at the store, but claimant does not count the money and simply trusts people to do the right thing. Claimant thinks "money grows on trees" and wants high-end things. Claimant spends most of his time playing video games online. Claimant really does not think about money because she always provides for him.

Claimant wants to go to college, but must take prerequisites before getting into the classes he wants. He does not understand the concept that he cannot just get the classes he wants.

Claimant's mother believes claimant would ask for help if needed, but likely not from a stranger. Most of the time claimant is with her anyway, so she feels he would not have the need to ask. Claimant's mother is with claimant 24 hours a day, seven days a week, so she just accepts that she has to do things for him. She cooks, cleans,

and takes care of him. Thus, claimant does not need to do anything for himself. However, claimant's mother stated that she will not be alive forever, so claimant will need assistance when she is not around someday.

Claimant's mother concluded that, unfortunately, claimant is not intellectually average at all. She said as much as she hates to admit it, claimant is intellectually disabled.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The Department of Developmental Services is the public agency in California responsible for carrying out the laws related to the care, custody and

treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. 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 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. (*Ibid.*)

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 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.

(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:

(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.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Evaluation

8. The burden was on claimant to establish his eligibility for regional center services. Claimant did not meet his burden.

Claimant has difficulties in cognitive and adaptive abilities. Cognitive and adaptive difficulties alone, however, are insufficient to qualify a person for regional center services. A preponderance of the evidence did not establish that claimant meets the diagnostic criteria for Intellectual Disability under the DSM-5.

Records indicate claimant has a long and well-documented history of learning disabilities, attributable to auditory and visual processing speed challenges; ADD and/or ADHD diagnoses; and possible mental health diagnoses (schizophrenia), which

do not qualify claimant for regional center services. Notably, claimant's cognitive abilities fell within the average range for most of his academic life, and did not begin to decline markedly until after age of 17, when other emotional and mental health symptoms emerged. This is more indicative of a psychiatric problem such as schizophrenia or other mental health disorder as opposed to Intellectual Disability under the DSM-5. Claimant is also being medicated for psychosis. Further, he received special education services in his later school years under the category of Emotional Disturbance, which would be consistent with the onset of his mental health symptoms. Even in his early years, claimant's cognitive abilities were scattered across all subsets as opposed to being consistently deficient globally, which is what would be expected for a person with a true intellectual disability.

Dr. Miller concluded claimant did not meet the diagnostic criteria for intellectual disability under the DSM-5, and her expert testimony was uncontroverted. Accordingly, claimant does not qualify for regional center services.

ORDER

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

DATE: July 2, 2019

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 90 days.