

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Agency.

OAH No. 2014010479

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on March 4, 2014.

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

Claimant represented himself. Claimant's uncle assisted claimant.

The matter was submitted on March 4, 2014.

ISSUE

Is claimant eligible for agency services under the diagnosis of Intellectual Disability?¹

FACTUAL FINDINGS

1. Claimant is 45 years old.

¹ The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5) uses the term Intellectual Disability or Intellectual Developmental Disorder in place of the formerly used term, "Mental Retardation."

2. Claimant applied for IRC services.

3. On December 9, 2013, IRC notified claimant of the following: "After a review of records which have been received, it appears Inland Regional Center (IRC) has concluded that [claimant] clearly is not eligible for Inland Regional Center (IRC) services for the developmentally disabled. An intake assessment is not warranted at this time because the documents submitted did not suggest the possibility of a qualifying diagnosis (Exh. 1)

4. On January 13, 2014, claimant timely filed a Fair Hearing Request. The stated reason for claimant's request was: "Review records & Reassess, Head Injury Approx. 6 yrs. Ago." In Describing what "is needed to resolve your complaint," Claimant wrote: "Evaluation." (Exh. 2) The instant hearing ensued.

5. Sandra Brooks, Ph.D., the IRC staff psychologist, testified during the hearing. She testified that she reviewed the only records still available from the Montebello Unified School District (District document). The one-page District document established the following facts: Claimant graduated from high school in June of 1987; claimant's school records, with the exception of the summary reviewed by Dr. Brooks, were destroyed on August 23, 1994; at one point claimant was administered the Wechsler Intelligence Scale for Children (WISC-R); the WISC-R test resulted in the following scores, Verbal-91, Performance-103, and Full Scale I.Q.-94; in a section of the District document entitled "Last I.Q. Test and Score," claimant's scores were listed as follows, Verbal-74, Performance-86, and Full Scale I.Q.-78.

6. Dr. Brooks testified that based on her review of the District document, claimant's I.Q. scores were "significantly above that expected of someone with Mental Retardation/Intellectual Disability."

7. Claimant testified that he had previously been diagnosed with visual perception disorder and dyslexia. Furthermore, about six years ago, when claimant was 39, claimant suffered a head injury.

8. Dr. Brooks testified that visual perception disorder and dyslexia are not conditions that make one eligible for Regional Center services. Additionally, any qualifying disability must have existed prior to claimant's 18th birthday; therefore, the fact that he suffered a head injury when he was 39 does not change Dr. Brooks' opinion concerning claimant's lack of eligibility. Furthermore, current testing/assessment would not be helpful in clarifying claimant's condition before he turned 18.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a "Developmental Disability" as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely..." California Code of Regulations, title 17, section 54000, further defines "Developmental Disability" as follows:

- (a) 'Developmental Disability' means a disability that is attributable to mental retardation, 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

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.

2. 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.

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3. The facts, considered as a whole, reveal that claimant does not have Mental Retardation/Intellectual Disorder. His past I.Q. scores place him at the borderline to average I.Q. range and given claimant's age, further assessment would not prove productive. The burden rests on claimant to establish that he suffered from a qualifying, "substantial," "Developmental Disability" prior to age 18; and, in this case, claimant failed to establish his eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

ORDER

IRC's conclusions that claimant is not eligible for agency services and that further assessment is not warranted are affirmed.

DATED: March 18, 2014.

_____/s/_____

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(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.