

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. 2014010742

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on July 9, 2014.

Claimant's mother represented claimant, who was not present at the fair hearing.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

The matter was submitted on July 9, 2014.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of autism spectrum disorder?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On November 14, 2013, IRC notified claimant that he was not eligible for regional center services.

2. On November 25, 2013, claimant's mother filed a fair hearing request appealing that decision and this hearing ensued.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5), identified criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services under the category of autism.

EVIDENCE PRESENTED AT HEARING

4. Claimant is a 6-year-old male. He claimed he was eligible for regional center services based upon a diagnosis of Autism Spectrum Disorder.

5. Claimant's 2012 Individualized Education Program (IEP) report demonstrated that claimant received special education services under a primary disability determination of Speech or Language Impairment. No secondary disability was listed. Claimant was in a regular classroom setting. Claimant's communication development was age appropriate. There were no concerns with his fluency or voice quality. With respect to his social/emotional behavior, claimant took an interest in playing with others and would sometimes take turns playing with others. Claimant's adaptive/daily living skills were age appropriate. Communication and articulation were the only goals referenced in the IEP, and they centered on speech and language-skills building.

6. 2010 medical records documented claimant's fall from a second story window and a fall off the bed, both of which resulted in head injuries. Diagnostic testing was essentially negative.

7. 2012 County Mental Health documents noted that claimant was evaluated and diagnosed with Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Psychotic Disorder, NOS. Claimant's mother advised that after the 2010 head injuries, she noticed a change in claimant's behavior and development. Claimant became more aggressive, had rapid mood swings, erratic and unpredictable behavior, was hyperactive, had hallucinations, and had nightmares. Claimant's mother advised that claimant's behavior was worsening over time. Claimant's speech impairment, poor eye contact, and poor concentration were noted in the assessment. The records documented many psychological concerns, but nothing that would establish eligibility for regional center services.

8. Progress notes from Stephanie Buchert, M.D., of Children's Services, documented claimant's medications and responses thereto. A January 17, 2014, one page sheet entitled "Diagnosis," noted that on November 7, 2013, claimant was given the following diagnoses: Axis I Diagnoses of Autistic Disorder, Mood Disorder NOS, and Attention Deficit/Hyperactivity Disorder. No other information regarding how those diagnoses were made was introduced. No psychological tests or reports were provided to support the Autistic Disorder diagnosis.

9. IRC Staff Psychologist Sandra Brooks, Ph.D., performed the IRC eligibility evaluation of claimant. She authored a report and testified in conformity with it at this hearing. Dr. Brooks opined that based upon her personal assessment of claimant and her review of all documents, claimant was ineligible for regional center services. Dr. Brooks credibly explained that claimant's performance at school was not due to a developmental disability, and nothing in claimant's IEP demonstrated that claimant was eligible for regional center services. Dr. Brooks pointed out the many other psychological diagnoses and factors that better explained claimant's behaviors. Dr. Brooks discussed her assessment of claimant and the many behaviors he exhibited that supported her opinion that claimant did not have Autism Spectrum Disorder. Dr. Brooks' testimony established that she had performed a careful and thorough analysis of claimant and claimant's records, and that her determination

that claimant did not qualify for regional center services was valid, reasonable, and well supported.

10. Claimant's mother testified that Dr. Buchert's opinion that claimant had Autism Spectrum Disorder was more persuasive than Dr. Brooks's opinions because he had seen claimant once a month for several years. However, nothing in Dr. Buchert's reports supported his diagnosis of Autism Spectrum Disorder. No foundation for that diagnosis was introduced. Claimant's mother also testified about her dissatisfaction and frustration with claimant's teachers and school district. She testified that the school personnel did not accurately document claimant's presentation and behaviors at school, and that the school records omitted many pertinent facts. Claimant's mother was upset that IRC relied on the school records because she believed they were incomplete. However, nothing corroborated her testimony that the school records were incomplete or inaccurate, and there was no reason to believe the school district would falsify claimant's IEP. Claimant's mother's testimony did not establish eligibility for regional center services.

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 in Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines California's responsibility for persons with developmental disabilities, and the State's obligation to provide services and supports to them.

4. Welfare and Institutions Code section 4512, subdivision (a), defines “developmental disability” as one that “originates before an individual attains age 18; continues, or can be expected to continue indefinitely; and constitutes a substantial disability for that individual.” A developmental disability “shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

5. California Code of Regulations, title 17, section 54000, defines developmental disability as one “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.” The developmental disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability. The developmental disability shall not include handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

6. California Code of Regulations, title 17, section 54001, defines substantial disability, and requires that the assessment for it be made by the regional center.

EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. None of the documents introduced or the testimony offered demonstrated that claimant had a diagnosis of autism or Autism Spectrum Disorder. The burden was on claimant to establish eligibility for regional center services. As claimant introduced insufficient evidence to establish he was eligible to receive regional center services on the basis of autism, his appeal of IRC’s determination that he is ineligible to receive services must be denied.

ORDER

Claimant's appeal from the Inland Regional Center's determination that claimant is not eligible for regional center services and supports is denied. Claimant is ineligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: July 22, 2014

_____/s/_____

MARY AGNES MATYSZEWSKI

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.