

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016070941

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 27, 2017.

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

Claimant's mother appeared on behalf of claimant. Claimant did not appear.

The matter was submitted on April 27, 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

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

1. 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 socio-culturally matched peers.

BACKGROUND

2. Claimant is a 13-year-old girl receiving regional center services as a result of a 2013 intellectual disability diagnosis by Edward Frey, Ph.D. In Dr. Frey's evaluation, Dr. Frey referenced claimant's previous diagnoses of Attention Deficit Hyperactivity Disorder and Mood Disorder. Although he noted an atypical testing profile, he nonetheless found claimant eligible. He also recommended reevaluating claimant in two

years because her results were somewhat atypical for a person with an intellectual disability.

3. On April 14, 2014, claimant's school district completed a psychoeducational evaluation. Claimant was already receiving special education services under the category of specific learning disability. The evaluation specifically concluded claimant did not have an intellectual disability and continued to find her eligible under the category of a specific learning disability.

4. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for 27 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology.

Dr. Stacy conducted a psychological assessment of claimant on April 28, 2016, in part based on the school report that claimant did not have an intellectual disability, and in part because Dr. Frey had recommended claimant be reevaluated following her original IRC assessment. Dr. Stacy reviewed a 2011 psychoeducational assessment concerning claimant; Dr. Frey's 2014 assessment; the assessment completed by claimant's school district in 2014; and a 2013 psychological report from Vista Community Counseling. Dr. Stacy also completed a diagnostic interview with claimant and completed the following assessments: Wechsler Scale of Intelligence for Children – Fifth Edition (WISC-5) and the Vineland Adaptive Behavior Scales – Second Edition (Vineland-2).

Claimant's results on the individual subtests of the WISC-5 were varied with all but one in the borderline to average range of intellectual functioning. Overall, claimant's cognitive functioning on the WISC-5 was determined to be within the borderline range.

Claimant's results on the Vineland-2 were also scattered, ranging from low, to mild, to moderately low. Overall, the results on the Vineland showed a mild deficit.

Dr. Stacy explained in her report:

A diagnosis of intellectual disability may be appropriate when an individual demonstrates deficits in intellectual functioning concurrent with deficits in adaptive functioning, the onset of which occurs in the developmental period. [Claimant's] cognitive skills vary from the Extremely Low range to the Average range. Overall, her cognitive functioning is in the Very Low/Borderline range of intellectual functioning. [Claimant] does not meet criteria for a diagnosis of Intellectual Disability.

[¶] . . . [¶]

[Claimant] has a diagnosis of Attention Deficit Hyperactivity Disorder and Mood Disorder, NOS. Both disorders can impact [claimant's] social skills and adaptive skills. They can also impact her ability to function successfully in new situations, social situations, and in situations that require flexibility. It is recommended [claimant] continue to receive mental health services.

Dr. Stacy concluded claimant's ADHD or Mood Disorder might be the more likely explanation for her lower performance on intellectual tests, as well as an explanation for the scattered scores. As Dr. Stacy explained, someone with a true intellectual disability will normally have consistent scores rather than scattered scores, indicating deficits in all

areas rather than only in some areas. She concluded claimant was no longer eligible for regional center services.

5. IRC notified claimant July 8, 2016, following Dr. Stacy's assessment, 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 Dr. Stacy's comprehensive reassessment. Claimant appealed that determination and this hearing ensued.

CLAIMANT'S MOTHER'S TESTIMONY

6. Claimant's mother testified that claimant has been on medication for ADHD and Anxiety for a long time. She believes claimant, generally, is behind in her development, awareness, social skills, etc. She opined that claimant may even have autism.

Claimant's mother testified that since claimant's diagnosis of intellectual disability in 2013, claimant has been receiving applied behavioral analysis interventions. Claimant does receive special education services as well under the category of specific learning disability, but attends class in a general education classroom with additional support services. Claimant received speech therapy from age four to seven. Claimant's mother feels all the interventions have helped claimant in her tantrums, play skills, and basic safety awareness. According to claimant's most recent individualized education plan at school, claimant would do better in a smaller classroom due to her ADHD. Claimant's mother is optimistic about claimant's future progress and hopes claimant continues to improve in her behaviors and cognitive development.

DIAGNOSTIC CENTER REPORT

7. Claimant's school district referred claimant to the California Department of Education's Diagnostic Center in Los Angeles for evaluation. The Diagnostic Center

completed a report dated April 21, 2017. The report is detailed and contained comprehensive assessments of claimant across multiple categories. According to the report, claimant's intellectual functioning is within the borderline range, however, her other afflictions – ADHD, Mood disorder, and Anxiety Disorder, are the primary explanations for her sub-par academic performance. Specifically, the report said:

[Claimant] has been given multiple diagnoses over the years (ADHD, Mild Intellectual Disability, Mood Disorder-NOS, and Anxiety Disorder). This assessment finds that the primary factors impacting [Claimant's] learning are her borderline cognition, attention deficits, language deficits, and anxiety. Specifically, [Claimant's] poor attention, anxiety, and language deficits impacted her performance across standardized assessments, with her performance across measures inconsistently ranging from low to below average. While her performance on standardized assessments were low, qualitative information, a review of her educational records, and performance on developmental reasoning identified relatively higher reasoning abilities, however still below age level expectations. [Claimant's] cognitive potential can best be described as falling within borderline range. . . .

The Diagnostic Center concluded also that claimant did not have a specific learning disability and she should be qualified for special education services under the category "other health impairment" as a result of the ADHD and speech and language impairment.

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 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 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) 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

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.

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. 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. Stacy's comprehensive reassessment and other documentary evidence presented at hearing. Although claimant was initially diagnosed with an intellectual disability, as she progressed in age, her cognitive ability measured within the borderline range. It appears that claimant's ADHD and anxiety may be affecting her ability to excel academically, and those disorders do not qualify a person for regional center services under the Lanterman Act.

Claimant's mother's testimony was straightforward, thoughtful and credible. Her desire to do what is best for his daughter 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 now clearly erroneous.

ORDER

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

DATED: May 4, 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.