

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020760

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on May 4, 2017.

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

There was no appearance on behalf of claimant.

The matter was submitted on May 4, 2017.

ISSUE

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

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 11, 2017, IRC notified claimant, a 22-year-old man, that he was not eligible for regional center services because the records he 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 as an individual with an intellectual disability.

2. On February 7, 2017, claimant, through his authorized representative (claimant's mother) filed a fair hearing request appealing IRC's determination. On February 28, 2017, IRC representatives and claimant's mother held an informal telephonic meeting to discuss claimant's fair hearing request and IRC's eligibility determination. Following the informal meeting, IRC adhered to its original determination that claimant was not eligible for regional center services.

3. On March 20, 2017, claimant's mother requested a continuance in order to hire an attorney to represent claimant. Claimant's mother also signed a time waiver in accordance with Welfare and Institutions Code section 4712, subdivision (a). OAH granted the request and the hearing was set for May 4, 2017. OAH served the Order and Notice of Hearing on IRC and claimant.

4. On April 27, 2017, IRC sent a letter to claimant containing discovery and a list of witnesses IRC intended to call at the hearing. IRC sent the letter to the same address listed on claimant's fair hearing request and contained on the proof of service for the Notice of Hearing.

5. On May 4, 2017, neither claimant's mother nor claimant appeared at the hearing. Ms. Pierce contacted claimant's mother telephonically from the hearing room. Claimant's mother stated she knew the hearing was scheduled for that date but would not be appearing because she did "not have time for this" and did "not think the

hearing would be fair anyways.” The undersigned reminded claimant’s mother that the hearing would proceed and she would not be successful in meeting her burden if she chose not to appear. Claimant’s mother again stated she would not be appearing and hung up the phone.

6. Given the lack of good cause for a continuance and claimant’s non-appearance, claimant was determined to be in default. IRC desired to proceed with the hearing in lieu of an order of dismissal.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER (AUTISM)

7. The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5) identifies criteria for the diagnosis of autism. The diagnostic criteria includes persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped 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 autism.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

8. 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.

EVIDENCE PRESENTED AT HEARING

9. Sandra Brooks, Ph.D., holds a doctorate in clinical psychology and has been a staff psychologist at IRC for nine years. Dr. Brooks testified at the hearing.

10. Dr. Brooks conducted a psychological assessment of claimant on November 7, 2016. Her assessment included a review of claimant's prior medical records, school records, and the following tests: Kaufman Brief Intelligence Test, Vineland Adaptive Behavior Scales, Childhood Autism Rating Scale (CARS), and interviews with claimant and claimant's mother.

11. Dr. Brooks noted that claimant's prior records showed he has been diagnosed with psychosis, Attention Deficit Hyperactivity Disorder (ADHD), Anxiety Disorder, and auditory hallucinations. Claimant receives special education services under the category of "other health impairment – Emotional Disturbance." Dr. Brooks said during her assessment, claimant's performance appeared to be impacted from auditory hallucinations (i.e. he was hearing voices in his head). Dr. Brooks explained that psychosis, ADHD, anxiety, and auditory hallucinations are mental health issues that do not qualify claimant for regional center services

Dr. Brooks said none of the records she reviewed showed claimant had a diagnosis of autism or intellectual disability prior to age 18. Moreover, claimant's mother said claimant did not have any developmental problems until age 10; Dr. Brooks testified that with autism or intellectual disability, symptoms would be apparent long before age 10.

Dr. Brooks found claimant to be within the range of autism on the CARS, but attributed his score to his other affliction; she explained that psychosis, ADHD, and hallucinations would yield a score like the one achieved by claimant. In other words, those afflictions produce autistic-like symptoms even though the claimant is not autistic.

Dr. Brooks also observed that cognitively, claimant tested low in her assessment. However, in the past, claimant tested much higher. Dr. Brooks explained that a person with autism or intellectual disability will have consistently low cognitive scores over time; they can score a false low but cannot score a false high. Thus, because of the inconsistent test results, she opined that claimant's emotional disturbance, psychosis, auditory hallucinations, and other mental health issues – not autism or intellectual disability – were impacting claimant's cognitive abilities.

Dr. Brooks therefore concluded claimant did not qualify for regional center services under the Lanterman Act.

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. 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.

3. 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.*)

4. 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

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.

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."

5. 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.

CONCLUSION

6. The burden was on claimant to establish his eligibility for regional center services. Claimant did not appear and none of the documents introduced in this hearing established that claimant had autism or an intellectual disability. Indeed the documents showed quite the contrary; they appeared to establish that claimant suffers from a wide array of mental health issues as confirmed by Dr. Brooks. Psychosis, auditory hallucinations, emotional disturbance, anxiety, and ADHD do not qualify a person for regional center services under the Lanterman Act. Dr. Brooks's expert testimony that claimant did not qualify for regional center services was credible and unrebutted.

ORDER

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

DATED: May 12, 2016

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.