

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017051292

DECISION

Administrative Law Judge (ALJ) Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on August 15, 2017.

Claimant was represented by his mother and father. Claimant was present for the hearing.

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

ISSUE

Is claimant eligible for regional center services due to Autism Spectrum Disorder?

FACTUAL FINDINGS

1. On May 22, 2017, Edward G. Frey, Ph.D. conducted a Psychological Evaluation of claimant. The Psychological Evaluation was performed to "assist in the overall process of determining eligibility for Regional Center services and/or to assist in program planning." (Exh. 5) Dr. Frey assessed claimant by reviewing past

medical/psychological records concerning claimant, including a report from Autism Spectrum Consultants (ASC)¹, and gathering information from the Vineland-Comprehensive Interview Form (the CARS2-ST), an Autism Diagnostic Interview-Revised (ADI), play observation, interaction, and a diagnostic interview. The assessment resulted in the following diagnostic impressions: "315.39 Language Disorder (F80.9), defer to speech and language pathologist, and 315.39 Speech Sound Disorder (F80.0), defer to speech and language pathologist." (Exh.5, pg. 24.) More specifically, Dr. Frey found and concluded that:

. . . [Claimant] was referred for psychological evaluation to assist in determining possible eligibility for Regional Center services.

[¶] . . . [¶]

[Claimant] was given a diagnosis in November of 2016 of Autism Spectrum Disorder by a group in Irvine called Autism Spectrum Consultants. Examiner has reviewed this report.

¹ On November 16, 2016, ASC assessed claimant using the Childhood Autism Rating Scale, Second Edition, Standard Version (CARS2-ST).The reported score indicated that claimant fell in the mild to moderate symptom range for Autism Spectrum Disorder.Claimant was also assessed with the Vineland Adaptive Behavior Scales (Vineland), Third Edition.The results of the Vineland assessment suggested claimant was in the "mild range of delay."Overall, the ASC reported that the "diagnostic impression is Autism Spectrum Disorder."(Exh. 6)

Examiner was specifically requested to evaluate [claimant] again for possible Autism Spectrum Disorder.

The diagnosis of Autism Spectrum Disorder requires persistent deficits in two main areas. The first area (Criterion A) is deficiencies in social communication and interaction. Specifically, deficits are present in the areas of social emotional reciprocity, non-verbal social communication, and in developing, maintaining, and understanding relationships. The second area (Criterion B) is the presence of at least two restricted or repetitive patterns of behavior, interest, or activities. Symptoms and behaviors must be present in the early developmental period, and must cause substantial disability in social, occupational, or other important areas of current functioning impacting three or more major life activities.

[¶] . . . [¶]

It is the examiner's opinion that [claimant] does not meet the full criteria for diagnosis of autism. He did not display deficits in social emotional reciprocity or in non-verbal communicative behaviors. Mother does report some difficulty in terms of relationships with peers. [Claimant] does have some minimal features from Criterion B, but these appear rather mild. There apparently is a fixated interest of

high intensity in playing with mother's cell phone. Mother says he does not like changes in his routine.

Administration of the Vineland Adaptive Behavior Scales, Third Edition-Comprehensive Interview Form, also is inconsistent with the presence of an Autism Spectrum Disorder. All domain scores as reported by mother are in the borderline range.

In summary, it is the examiner's opinion that there is not sufficient clinical evidence to warrant a diagnosis of Autism Spectrum Disorder at this time. [Claimant] does; however, appear to present with features of Language Disorder and Speech Sound Disorder.

[¶] . . . [¶]

RECOMMENDATIONS:

[¶] . . . [¶]

1. Mother may wish to consider requesting a psychoeducational evaluation through the public school district [with the California Diagnostic Center located in Los Angeles, California]

[¶] . . . [¶]

4. It would be appropriate for [mother and father] to closely observe and monitor [claimant's] behaviors over the next year or so. If additional features suggestive of autism emerge, re-assessment may be of benefit. (Exh. 5, pgs. 23-25.)

TESTIMONY OF VERONICA A. RAMIREZ, PSY.D.

2. Dr. Ramirez, a clinical psychologist at IRC, testified during the instant hearing. Her testimony is summarized as follows: a person with autism exhibits symptoms in every setting; the CARS2-ST administered by ASC contained "no details as to numbers" so it was difficult to tell how the diagnosis of "mild-moderate range of autism" was reached; based on Dr. Frey's test results, including results from the Autism Diagnostic Interview-Revised (an "in depth clinical interview"), and the CARS2-ST administered by Dr. Frey (the CARS2-ST was focused on information provided by parents and Dr. Frey's personal observations of claimant), claimant "did not meet the criteria for Autism Spectrum Disorder." Dr. Ramirez's review of claimant's records confirmed that Dr. Frey's determinations were accurate.

MOTHER'S TESTIMONY

3. Mother's testimony is summarized as follows: claimant was having a "good day" the day he was assessed by Dr. Frey; she does not believe Dr. Frey listened to her when she described the behaviors claimant exhibited at home and in the community; she did not believe Dr. Frey was attentive to her concerns or spent enough time with claimant to express an expert opinion concerning whether claimant had Autism Spectrum Disorder, because claimant, who is three years old, hits her, does not like certain clothes, textures, etc.

DR. RAMIREZ'S OBSERVATIONS OF CLAIMANT DURING THE HEARING

4. Dr. Ramirez was present throughout mother's testimony and observed claimant's reactions to mother as she testified. At one point mother began to cry and claimant went to her side and stroked her arm to console her. After mother testified Dr. Ramirez again testified. She was asked if anything about mother's testimony changed her opinion concerning the accuracy of Dr. Frey's assessment of claimant. Dr. Ramirez testified that her observations of claimant during the hearing supported Dr. Frey's assessment and conclusions. Especially telling was claimant's ability to know that his mother was upset and that he immediately went to her side and tried to console her by stroking her arm. Dr. Ramirez testified that mother's descriptions of claimant's behaviors, such as hitting, etc., was indicative of behavior problems but not Autism Spectrum Disorder or any other condition that would make claimant eligible for Regional Center services. As Dr. Ramirez expressed it, "All children with Autism have sensory issues; however, not all children with sensory issues have Autism." Claimant's acting out (hitting, etc.) can be the result of sensory processing disorders. For example, claimant may be acting out due to speech and language difficulties causing frustration. Accordingly, the IRC representative recommended that mother get claimant's school district to fund a five day, extensive assessment through California Diagnostic Center in Los Angeles to make a determination of the diagnosis/diagnoses indicated by claimant's behaviors.

THE ALJ'S OBSERVATIONS

5. The ALJ also closely watched claimant's behavior before, during and after the hearing. At the start of the hearing the ALJ addressed claimant and told him that he was being very well behaved and claimant shyly smiled (bent his head down and exhibited a sweet smile). During the hearing the ALJ saw claimant stroke his mother's

arm when she began to cry. These observations were consistent with Dr. Frey's and Dr. Ramirez's conclusions that claimant did not have Autism Spectrum Disorder.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as follows:

'Developmental disability' means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

3. California Code of Regulations, title 17, section 5400.1, defines "substantial disability" as follows:

(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

4. The only competent evidence presented established that claimant does not have Autism Spectrum Disorder or any other qualifying developmental disability. Accordingly, at this time IRC is precluded by statute(s) from providing services for claimant; however, in the future, if parents obtain competent evidence to the contrary, such as an assessment through California Diagnostic Center, they are encouraged to submit another request for services and claimant will be reevaluated by IRC, taking any assessment(s) provided by parents into consideration.

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ORDER

Claimant's appeal is denied. IRC's finding that claimant does not qualify for Regional Center services is affirmed.

Dated: August 23, 2017

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