

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. 2017101128

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 18, 2018.

Sydney Shepard, CSSW V, MSW works with Riverside County Child Protective Services. She is claimant's authorized representative. She appeared telephonically and represented claimant.

Senait Teweldebrhan, M.A., Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

ISSUE

Must IRC perform an intake and assessment to determine whether claimant qualifies for regional center services under the category of Autism?

FACTUAL FINDINGS

JURISDICTION

1. Claimant, a 5-year-old male, requested an intake evaluation from IRC. After reviewing the results of one assessment that was performed when claimant was about three and one-half years old, IRC concluded that:

After Inland Regional Center (IRC) reviewed the records that IRC received, IRC decided that no 'intake' services can be provided at this time, because the records did not show that [claimant] has a disability that qualifies him to receive IRC services. Rather, the records indicate that [claimant] does not currently have a 'substantial disability' as a result of . . . Autism. . . . Therefore, IRC concluded that [claimant] is not currently eligible for IRC services for people with developmental disabilities. . . . (Exh. 1)

Claimant timely filed a Fair Hearing Request and the instant hearing ensued.

EVIDENCE CONCERNING CLAIMANT'S CONDITION

2. The only record that IRC reviewed was a single Psychological Assessment authored by Sara deLeon, Psy.D., a clinical psychologist with the Institute for Behavioral Health, Inc. Dr. deLeon assessed claimant using the following assessment instruments and techniques: the Childhood Autism Rating Scales 2nd Edition Standard Version (CARS2-ST); the Autism Diagnostic Observation Scale 2nd Edition (ADOS-2) Module 2; the Vineland Adaptive Behavior Scales (VABS-II); parent interview; observations; and a review of claimant's file(s). At the time of assessment claimant was three years and seven months old. The assessment was performed after claimant was referred to the Institute

for Behavioral Health, Inc. "for evaluation by IEHP to rule out Autism Spectrum Disorder." (Exh. 5) In her report, dated May 21, 2015, Dr. deLeon documented relevant assessment findings and conclusions as follows:

DSM-5 CRITERIA

[Claimant] meets criteria for a diagnosis of Autism Spectrum Disorder at this time as he exhibits persistent deficits in social communication and social interaction, and restricted, repetitive patterns of behavior, interest or activities.

[Claimant] exhibits deficits in social-emotional reciprocity as evidenced by abnormal social approach and the failure to engage in normal back-and-forth conversation. He shows deficits in nonverbal communicative behaviors as used in social interaction as evidenced by poorly integrated verbal and nonverbal communication. [Claimant] also shows deficits in developing, maintaining and understanding social relationships as evidenced by difficulties in sharing imaginative play and in making friends. He exhibits repetitive motor movements, use of objects and speech; insists on sameness in his routines; exhibits restricted interests; and shows reactivity to sensory aspects of the environment. The symptoms associated with Autism Spectrum Disorder require support and cause impairments [in] functioning.

DIAGNOSTIC IMPRESSIONS

Autism Spectrum Disorder

Social communication: Level 1

Restricted, repetitive behaviors: Level 1

With accompanying intellectual impairment

With accompanying language impairment

RECOMMENDATIONS

1. [Claimant's] family is encouraged to share this report with parties who can benefit from the information such as medical, behavioral and/or school personnel.

2. ABA assessment and treatment to assist [claimant] with communication, social and adaptive skills.

3. Explore Title 5 services through local school district as appropriate. (Exh. 5)

3. Claimant was removed from his home by Riverside Child Protective Services and his case was assigned to Sydney Shepard, CSSW V, MSW. Ms. Shepard has training and experience dealing with children who come under/into the Child Protective Services system. Ms. Shepard has a Masters' Degree in Social Work, has "investigated child abuse," and has 35 to 45 cases as part of her workload. She has also "had contact with IRC clients" during the course of her employment. She was very familiar with claimant and his case; accordingly, she testified during this hearing concerning claimant. Her testimony is summarized as follows: claimant is currently in preschool; "he first started this year," and is a "general pre-K class"; he receives Occupational Therapy and Speech Therapy; he cannot "speak or express himself, all he can do is yell and scream";

he does not possess basic daily living skills, "he can't unfasten his pants to go to the bathroom" and at times he comes home from school "soiled"; claimant cannot wipe himself after toileting; and he cannot wash his own hands. Ms. Shepard testified that claimant is "regressing" and she is advocating for a full IRC assessment because she is concerned about the possibility of claimant "slipping through the cracks."

IRC'S EVIDENCE

4. Dr. Ruth Stacy, a staff psychologist with IRC, testified that she reviewed Dr. deLeon's report and, based on that report, she expressed her opinion that claimant is only mildly autistic; and, according to Dr. Stacy, Dr. deLeon's report indicated that claimant is not "substantially disabled" due to autism. Accordingly, Dr. Stacy supports IRC's denial of claimant's request for a comprehensive intake evaluation.

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. Welfare and Institutions Code section 4512, subdivision (l)(1), defines "substantial disability" as follows:

'Substantial disability' means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

4. Welfare and Institutions Code section 4642, subdivision (a)(1) provides, in part: "Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional center." (Underline added.)

EVALUATION

5. The evidence presented established that claimant has been diagnosed with a developmental disability: autism. The question is whether claimant's autism is substantially disabling, thus qualifying claimant for regional services. In this case, the question of "substantial disability" as defined by Welfare and Institutions Code section 4512, subdivision (l)(1), has never been directly addressed/assessed. This is not a case where IRC denied intake and assessment because claimant does not have a developmental disability, because he clearly does. He has been diagnosed with autism; therefore, he is not only "believed to have a developmental disability," he actually has a developmental disability. Accordingly; pursuant to Welfare and Institutions Code section 4642, subdivision (a)(1), claimant "shall¹ be eligible for initial intake and assessment services."

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ORDER

Claimant's appeal is granted. IRC shall provide claimant with initial intake and assessment services.

¹ "Shall" is mandatory language and leaves no discretion to the agency.

Dated: January 24, 2018

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.