

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017110206

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on January 31, 2018.

Claimant personally appeared and was represented by his authorized representative, his mother.

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 due to claimant's assertion that he has Autism Spectrum Disorder (ASD)?

FACTUAL FINDINGS

JURISDICTION

1. Claimant, a 32-year old man, contacted IRC and requested an intake evaluation. On September 21, 2017, after reviewing school records provided by claimant,

IRC notified claimant that he was not eligible for regional center services. Following the notification, IRC and claimant, through his authorized representative, had a “telephonic informal meeting.” On November 30, 2017, following the informal meeting, IRC notified claimant of the following:

[¶] . . . [¶]

You provided some details of [claimant’s] activities of daily living and the areas where he requires assistance. You reported that [claimant] does not like things that can over-stimulate his senses. Some of the examples you provided were his sensitivity to taste of foods, long [*s/c*] pitch sounds, touch and bright lights. You reported that [claimant] was diagnosed four years ago with Pervasive Developmental Disorder (PDD) and Schizophrenia by a psychologist while he was seeking to qualify for services through the Department of Rehabilitation for employment assistance.¹ You stated that he has been getting counseling services and taking

¹ The reference to PDD was contained in a Department of Rehabilitation “Case Note” dated March 1, 2012. That reference, the only reference to PDD in claimant’s records, stated: “Per the Psychological Evaluation from D. Sabine Gaedt CI [claimant] has a Pervasive Developmental Disorder and Depressive Disorder.” Dr. Gaedt did not testify and her report was not produced by claimant. Consequently, claimant failed to present sufficient evidence that he has been “diagnosed” with PDD or, that PDD was a “well established diagnosis.”

prescribed psychiatric medication, which has helped with his symptoms.

IRC originally made its eligibility decision based upon a review of records provided. The information provided was insufficient to warrant further testing. However, during the informal meeting, you stated that you could provide additional information that may be helpful to determine if an assessment is needed to determine eligibility. You agreed to submit additional school records containing social interaction and communication assessments, tests that confirmed the PDD diagnosis,² mental health records, and any reports before the age of eighteen that described [claimant's] functioning levels. . . . (Exh. 4)

2. IRC was provided with the following documents: a June 5, 1984 (when claimant was almost 15 years old) Psychological Evaluation by Steve Bearden, M.S.; an Aurora R-8 School District Evaluation Summary, dated April of 1986 (claimant was almost 17 years old); an Aurora R-8 Schools Comprehensive Report, dated May 26, 1988, (claimant was almost 19 years old);³ An Aurora R-8 Diagnostic Summary, dated May 1, 1991; A Cox Medical Center report, dated October 7, 1993; an Aurora R-8 School District

² The additional "tests that confirmed the PDD diagnosis" were not provided by claimant.

³ This report/summary, as well as the remaining documents provided to IRC, concerned observations and assessments that occurred after claimant had turned 18. Nonetheless, IRC took all of the documents provided by claimant into consideration.

IEP (Individualized Education Plan), dated May 17, 1994; an Aurora R-8 Multidisciplinary Diagnostic Summary, dated May 25, 1994; an Aurora R-8 School District IEP, dated May 18, 1995; an Aurora R-8 Multidisciplinary Diagnostic Summary, dated May 8, 1997; an Aurora R-8 School District IEP, dated May 21, 1997; and, a Yucca Family Medical Care Progress Note, dated September 21, 2017.

IRC's psychologist, Ruth Stacy, Psy.D., reviewed all of the documents provided by claimant, as described above, and the following documents provided on the date of the instant hearing: March 1, 2012, California Department of Rehabilitation documents (Exh. A); May and June, 2017 California Health and Human Services Agency documents (Exh. B); and August 2017 Social Security Administration Disability documents (Exh. C).

DR. RUTH STACY'S TESTIMONY

3. Dr. Stacy has a doctorate degree in Psychology. She has been one of IRC's Staff Psychologists for the past two years. Before becoming a Staff Psychologist, Dr. Stacy worked as a case-worker at IRC for 20 years.

4. Dr. Stacy testified that claimant's records, including those provided by claimant during the instant hearing, did not reflect ASD or any other condition that would make claimant eligible for Regional Center services. The records did reveal that claimant has a documented history of speech and language disabilities; learning disabilities; articulation disorder; hoarding; schizophrenia; and depression. None of claimant's documented conditions and behaviors were indicative of any developmental

disabilities, including ASD,⁴ that would qualify claimant for an IRC intake assessment or IRC services.

CLAIMANT'S MOTHER'S TESTIMONY

5. Claimant's mother's testimony disclosed that in addition to the conditions described in Finding 4, above, claimant has diabetes and anxiety. Mother testified that claimant can "shop on his own," likes to read, collects bottles and old batteries and has trouble communicating and socializing. Claimant "likes to ride the bus at times." Claimant exhibits no "physical repetitive" behaviors and although he is "capable of a lot of things" he "lacks empathy."

CLAIMANT

6. Claimant was present for the entire hearing and appeared very attentive. He did not exhibit any self-stimulating or repetitive behaviors. In fact, at the appropriate time in the hearing, claimant provided the following brief testimony: at one point in time claimant's brother hired him to work at a McDonald's restaurant; claimant worked "a couple hours a day for about 10 months"; claimant testified that "it took me awhile to learn how to do everything." Claimant was well behaved, respectful and responsive to the questions posed to him at this hearing.

DR. STACY'S TESTIMONY AFTER MOTHER AND CLAIMANT TESTIFIED

7. Dr. Stacy was recalled as a witness after mother and claimant had testified. Dr. Stacy testified that there was nothing she heard during their testimony that would

⁴ According to the Diagnostic and Statistics Manual, Fifth Edition (DSM-5), PDD only falls under the ASD "umbrella" if it is a "well-established DSM-IV (the previous edition of the DSM)" diagnosis. (Exh. 20, pg. 133.)

change her professional opinion that claimant did not exhibit any symptoms of a qualifying developmental disability and that further testing/assessment was not warranted. Dr. Stacy further testified that mother's testimony was consistent with past records in that claimant has "a lot of different factors going on" such as speech and language problems, depression and anxiety. None of the claimant's diagnoses, however, constitute a qualifying developmental disability or indicate further assessment(s) would be helpful.

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 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

4. The evidence presented during the instant hearing failed to establish that claimant is, or should be, "believed to have a developmental disability"; therefore IRC is not legislatively mandated to conduct initial intake services. Consequently, IRC properly exercised its discretion in denying claimant's request for intake services and assessments.

ORDER

Claimant's appeal is denied.

Dated: February 13, 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.