

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018100082

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on October 31, 2018.

Keri Neal, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, who was not present.

The matter was submitted on October 31, 2018.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On August 22, 2018, IRC notified claimant's authorized representative that claimant was not eligible for regional center services because the records provided to IRC did not establish that claimant 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 September 14, 2018, claimant's authorized representative filed a fair hearing request appealing IRC's determination. Following an informal meeting, IRC adhered to its determination that claimant was not eligible for regional center services.

DIAGNOSTIC CRITERIA FOR AUTISM

3. The Diagnostic and Statistical Manual of Mental Disorders (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.

EVIDENCE PRESENTED AT HEARING

4. Holly Miller, Psy.D., is a staff psychologist at Inland Regional Center. She obtained her Doctor of Psychology in 2009, and already held a Master of Science in

Psychology and Bachelor of Arts in Psychology. Dr. Miller has served in a variety of positions, including clinical supervisor where she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals, and has won awards in her field. Dr. Miller also has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Miller is an expert in the areas of autism, intellectual disability, and the Fifth Category. The following is a summary of Dr. Miller's testimony and the documents reviewed by IRC.

5. Dr. Miller reviewed an Early Intervention Report dated January 2, 2018, and a Creative Homes Progress Report dated June 20, 2018. Nothing in the records indicated that claimant had an autism diagnosis based on the DSM-5 criteria.

6. Claimant is currently three years old. According to the Early Intervention Report, claimant was referred to the vendor for tantrums, screaming, whines, cries, and other behavioral problems when he was a little over two years old. The report indicates that claimant had appropriate social and communication skills, responded to eye contact, and used appropriate social greetings. There was no evidence that claimant had any barriers to learning such as weak motivation or sensory defensiveness. Dr. Miller explained that a person with autism would not have the social communication skills claimant displays. Overall, the only thing that stood out in this report was that claimant had low scores in expressive and receptive language, suggesting a speech and language disorder as opposed to autism.

7. Similarly, there was nothing in the Creative Home Programs progress report to suggest claimant has autism. According to the report, claimant's mother was

concerned that claimant was not verbally communicating. Claimant merely points to items he wants. The report shows claimant is somewhat delayed in the area of speech and language, but there is no diagnosis of autism and no testing was conducted for autism.

8. Claimant's mother also brought a report to the hearing completed by a speech and language pathologist that showed delays in speech and language. As Dr. Miller explained, a speech and language pathologist is not a psychologist or psychiatrist, so a speech and language pathologist cannot diagnose autism. As with the other reports, the report completed by the speech and language pathologist showed delays in those areas, but were not indicative of autism.

CLAIMANT'S MOTHER'S TESTIMONY

9. Claimant's mother testified that claimant has been getting help twice per week with his speech and language skills for approximately eight months. Claimant's mother was told claimant might have a speech disorder called apraxia, which was why she took claimant to the speech and language pathologist. Claimant's mother said claimant does not talk, and only uses gestures to show what he wants. Claimant is still not talking. Claimant was rejected by a preschool because he is not talking. Claimant does not fixate on any objects, does not engage in repetitive movements, and does not have sensory issues. He plays with his nephews. The only reason claimant's mother came to regional center to have claimant evaluated was because the speech and language pathologist recommended that she do so.

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 and the standard is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

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;

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.

(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 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 by a preponderance of the evidence that he is eligible for regional center services. The records submitted by claimant and the testimony of claimant's mother did not meet that burden. Although claimant clearly exhibits delays in the area of speech and language, those types of delays – without more – do not meet the DSM-5 diagnostic criteria for autism. Accordingly, claimant is not eligible for regional center services.

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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: November 9, 2018

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.