

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

D.S.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2012031230

## DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Bernardino, California on June 14, 2012.

The Inland Regional Center (agency) was represented by Stephanie Zermeno, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his father.

Oral and documentary evidence was received and the matter was submitted on June 14, 2012.

## ISSUE

Should claimant's eligibility be terminated?

## FACTUAL FINDINGS

1. Claimant, who is five years old, began receiving Early Intervention services from the Frank D. Lanterman Regional Center (LRC) on April 1, 2009. On September 29,

2009, after claimant turned three years old, the LRC notified claimant's parents that claimant "... is eligible for services after the age of three ... on the basis of his diagnosis of Autism." (Exhibit C<sup>1</sup>-1) Claimant's "diagnosis of Autism" resulted from a July 29, 2009, psychological evaluation by Janet Wolf, Ph.D. In performing the July 29, 2009, evaluation, Dr. Wolf used the following evaluation instruments: the Bayley Scales of Infant and Toddler Development, III; the Autism Diagnostic Observation Schedules (ADOS); and the Vineland Adaptive Behavior Scales. Dr. Wolf also reviewed past assessment results and observed claimant during the evaluation process and at school. Based on testing, records review, discussions with claimant's parents and teachers, and her own observations of claimant, Dr. Wolf noted the following:

[Claimant] demonstrated strengths of physical imitation, nonverbal cognitive functioning, emerging imaginative play, and participation in the routine of his classroom. He demonstrated challenges of atypical relatedness, atypical communication, and restrictive, repetitive, and stereotyped patterns of behavior that are consistent with [a] diagnosis of Autistic Disorder. He is a high-functioning little boy with an excellent potential for significant progress in response to individualized intervention.

**Summary:** [Claimant] was delivered full term via emergency C-section due to heart decelerations accompanying maternal contractions. Ages of attainment of motor developmental milestones were within the norm with walking at 14 months.

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<sup>1</sup> "C" refers to claimant's exhibits.

He was referred for early intervention assessment around 29 months at the recommendation of his preschool due to concerns regarding language delays. He has attended preschool five days a week and has received speech therapy a minimum of twice a week. Parents' concerns include unclear speech, 'difficulty learning,' hyperactivity, and his wanting to 'do his own thing.' When he was assessed at 29 months, his cognitive and language skills fell in the significantly delayed range. During the current developmental assessment, cognitive skills were age-appropriate and language skills were significantly delayed. [Claimant] demonstrated challenges of atypical relatedness, atypical communication, and restrictive, repetitive and stereotyped patterns of behavior that are consistent with [a] diagnosis of Autistic Disorder. He also demonstrated many strengths that lead me to be very hopeful about his potential for significant progress in response to individualized intervention. [Claimant] presented as significantly handicapped in the areas of communication, learning, and self-direction. However, he may be able to use his strengths to diminish these areas of handicap in the future. (IRC Exh. 9)

It appears that Dr. Wolf saw great potential for improvement and was making a provisional diagnosis of Autistic Disorder. This conclusion is not only supported by the above-quoted language from her assessment report, it is also supported by her concluding recommendation that claimant undergo a "Psychological re-evaluation prior to five to re-assess strengths, challenges, and intervention needs." (IRC Exh. 9)

2. On September 20, 2010, a school psychologist, Sandy White, Ed.S., conducted “[a]n early Triennial [Psychological] Evaluation” to “update [claimant’s] present levels to determine appropriate placement and services.” (IRC Exh. 8) The resulting Psychological Evaluation report, dated September 21, 2010, is paraphrased as follows: Rapport with claimant was easily established; claimant had a positive attitude toward the assessment process; claimant transitioned easily from one activity to another and displayed good social skills; claimant played cooperatively with three other boys while playing with blocks; claimant had no difficulty transitioning between activities; claimant engaged in pretend play, including having a doll walk down some stairs; claimant helped the other children clean up when play activities were concluded; claimant scored in the low average range on the Differential Ability Scales (DAS), strength was noted in claimant’s visual spatial skills, his Nonverbal Reasoning Composite was within the low average range to average range, his Verbal Composite was within the borderline range, and his Spatial Composite was within the average range; claimant’s overall communication skills were at an age equivalency of 3 years, 10 months (at the time claimant was 4 years, one month old), which is in the average range; claimant made appropriate eye contact with the clinician and completed all assessment procedures; claimant’s speech was free from excessive disruptions and disfluencies; claimant did show less ability to verbally express himself than he had with understanding language, however, he was able to adequately function in the classroom with his peers; claimant did not exhibit any sensory processing difficulties in the classroom; claimant expressed his desire to play with others, preferred to play with others, demonstrated awareness of how others feel, and he could keep working on a task for 30 minutes with a peer; claimant previously demonstrated certain autistic behaviors but at the time of the assessment he no longer displayed those behaviors; claimant’s parents indicated that claimant’s behaviors did not represent severe problems, on the GARS test claimant was rated in the “Unlikely” range of having any probability of Autism; claimant showed average ability to understand language, however, the degree of difficulty was not

clinically significant; claimant had no difficulty relating to others, he could appropriately use his body, he engaged in make-believe play, and was able to accept changes in routine; on a questionnaire completed with claimant's parents, his parents indicated that he had a lot of autistic-like characteristics when he was younger but no longer displayed those characteristics. (See IRC Exh. 8)

The report concluded by noting that claimant "does not meet the criteria for special education placement" because he "no longer qualifies for special education services under the category of Autism." (IRC Exh. 8)

3. On February 23, 2012, Psychologist Thomas F. Gross, Ph.D., evaluated claimant. Dr. Gross' findings and conclusions are paraphrased as follows: claimant was cooperative and participated in all aspects of the assessment; he made good eye contact with a nice smile; he oriented to interactive bids and was aware of the examiners' presence and periodically engaged in social referencing; no odd, repetitive, or stereotyped behaviors were noted; he played with toy figures and involved them in "elaborate" imaginative play; he made up dialog and verbalized a story-line as he played; no odd use of objects was noted and no small part focus or repetitive manipulation of small object parts was observed; his full IQ was in the average range (108) and he obtained a score of 23.5 on the Childhood Autism Rating Scale 2<sup>nd</sup> Edition (CARS) which was below the score (29.5) indicative of Autism; and claimant was able to attend to gross changes in other's emotional states and responded to changes in other's emotional states.

Dr. Gross concluded: "I did not find in my observations of [claimant] or in his father's report of his current behavior[s] a sufficient set of features that would justify the diagnosis of Autistic Disorder. It would appear that in the past [claimant] exhibited behaviors that were more consistent with those found in children who experience a Pervasive Developmental Disorder." (IRC Exh. 7)

4. On April 13, 2010, Autism Spectrum Therapies (AST) began treating claimant with Applied Behavioral Analysis (ABA) techniques and training claimant's parent's how to

use ABA techniques. On March 30, 2012, AST issued a "Termination Report" for the period of December 2011 through February 2012. The March 30<sup>th</sup> report made the following recommendation:

[Claimant] and [mother] have responded well to the ABA strategies. [Claimant's] engagement in maladaptive behaviors has decreased. [Mother] has expressed an immense understanding of [claimant's] engagement in maladaptive behaviors and strategies to assist him in decreasing his engagement in maladaptive behaviors in and outside of session. It has been a pleasure working with [claimant] and [claimant's family]. **AST is terminating services.** (IRC Exh. 10, emphasis in original)

5. Claimant's father (father) testified and presented 16 reports, all of which were received in evidence. The reports were from the Frank D. Lanterman Regional Center, a Speech and Language Pathologist/Child Development Specialist, a Child Development Specialist, Kaiser Permanente, and AST. Additionally there were Individualized Family Service Plan documents, Individualized Education Program (IEP) documents, Occupational Therapy documents, Psychological Evaluation documents, and Speech and Language evaluation documents. Those documents are consistent with the July 29, 2009, evaluation by Dr. Wolf. All of the reports reference clinical impressions consistent with Autistic Disorder and or PDD, Not Otherwise Specified (NOS). It is critical to note that all of the documents provided by father were dated between February 9, 2009, and January 5, 2011, with most of the documents having been prepared in 2009.

6. Dr. Sandra Books, the staff psychologist for the agency, was present throughout the hearing. She listened to all the testimony, and reviewed all of the reports received in evidence. After carefully considering all of the evidence presented, Dr. Brooks

testified unequivocally that claimant does not qualify for agency services and that any current diagnosis of Autistic Disorder would be clearly erroneous.

## ANALYSIS

7. All of the evidence was consistent. The clinical picture that developed from the evidence shows that claimant does not suffer from Autistic Disorder and does not have any other condition that would qualify him for agency services. It appears that although there were many early (2009) references to Autistic Disorder, all of the references were either clinical impressions or provisional diagnoses. To the extent any of the Autistic Disorder references are considered to have been final diagnoses, they were clearly erroneous. Fortunately, claimant is responding to interventions and has greatly improved. Hopefully, this trend will continue.

## LEGAL CONCLUSIONS

1. In order to qualify for services Welfare and Institutions Code section 4500, et seq. requires that a claimant suffer from a developmental disability. Welfare and Institutions Code section 4512, subdivision (a) defines "developmental disability" as follows:

. . . 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for

individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) lists criteria which must be met to provide a specific diagnosis of Autistic Disorder, as follows:

A. A total of six (or more) items from (1), (2) and (3), with at least two from (1), and one each from (2) and (3):

(1) Qualitative impairment in social interaction, as manifested by at least two of the following:

(a) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.

(b) Failure to develop peer relationships appropriate to developmental level.

(c) A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest).

(d) Lack of social or emotional reciprocity.

(2) Qualitative impairments in communication as manifested by at least one of the following:

(a) Delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gestures or mime).

(b) In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.

(c) Stereotyped and repetitive use of language or idiosyncratic language.

- (d) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
- (3) Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:
  - (a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
  - (b) Apparently inflexible adherence to specific, nonfunctional routines or rituals.
  - (c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements).
  - (d) Persistent preoccupation with parts of objects
- B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) Social interaction, (2) language as used in communication, or (3) symbolic or imaginative play.
- C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning. (*Id.* at p. 75.)

3. According to the DSM-IV-TR, the foregoing specific clinical criteria must exist to diagnose autism. In this case, the evidence revealed that claimant does not satisfy the required number of elements within the autism criteria schedules of the DSM-IV-TR; therefore, he does not have Autistic Disorder/Autism

4. Although there were early references to claimant having Autistic Disorder that could be considered diagnoses, California Welfare and Institutions Code section 4643.5, subdivision (b) provides: "An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from the regional center unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." In the present instance, a comprehensive reassessment of claimant established that any previous diagnoses of Autistic Disorder were clearly erroneous.

5. Claimant does not suffer from mental retardation, cerebral palsy, epilepsy, or any disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

6. The Factual Findings and Legal Conclusions, considered in their entirety, support the agency's determination that claimant fails to meet eligibility requirements for services.

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The agency's determination that claimant's services should be terminated due to lack of eligibility is upheld.

DATED: June 14, 2012.

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ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

**Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**