

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

D.P.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2012041067

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on July 9, 2012.

The Inland Regional Center (agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on July 9, 2012.

ISSUE

Is claimant eligible for agency services under the diagnosis of Autistic Disorder?

FACTUAL FINDINGS

1. In August of 2008, claimant was referred to the agency due to concerns about his speech delay and poor eye contact. Claimant began receiving Early Start services

from the agency under the category of "at risk."

On July 31, 2009, when claimant was two years, seven months old, he was assessed by agency Psychologist Sandra Brooks, Ph.D. to determine whether he qualified for continued services under the Lanterman Act.

2. During the July 31, 2009, assessment Dr. Brooks assessed claimant by using the following assessment procedures: the Bayley Scales of Infant and Toddler Development-Third Edition; the Wechsler Preschool and Primary Scale of Development (Ages 2:6-3:11); the Child Development Inventory; the Childhood Autism Rating Scale; a parent interview; observations of claimant; and a complete review of claimant's file. In her report, Dr. Brooks summarized her findings and observations concerning the possibility of claimant qualifying for services under a diagnosis of autistic disorder as follows:

. . . [Claimant's] behavioral presentation is inconsistent with a diagnosis of Autistic Disorder. In general, [claimant] maintained a level of social interest and awareness that are atypical of children with autistic spectrum disorders. [Claimant's] difficulties in social interaction are more related to his aggressive behavior and his difficulties with impulse control than to a lack of social interest. [Claimant's] behaviors are more consistent with a diagnosis of attention deficit hyperactivity disorder; however, [claimant] is too young to receive this diagnosis. . . It appears that [claimant] currently meets the criteria for mixed expressive language disorder. . . .

(Exh 10)

3. On December 20, 2010, claimant was assessed by agency Psychologist Paul Greenwald, Ph.D. to determine if claimant qualified for agency services under diagnoses of Autistic Disorder and/or intellectual disability (Mental Retardation). As part of the

assessment Dr. Greenwald compiled a developmental history, took a medical history, read and considered previous assessments, made observations and further assessed claimant's condition using the following assessment tools: the Wechsler Preschool and Primary Scale of Intelligence-Third Edition (WPPSI-III); the Autism Diagnostic Observation Scale (ADOS) Module 1; the Children's Autism Rating Scale, 2nd Edition (CARS2-ST); and the Children's Diagnostic Inventory (CDI).

Claimant achieved a Full Scale Intelligence Quotient (IQ) of 98 and his ADOS diagnostic algorithm did not meet the cutoff criteria necessary to diagnose Autistic Disorder. In pertinent part, Dr. Greenwald's report summarized his findings and conclusions, as follows:

WPPSI-III testing of [claimant's] cognitive/intellectual development revealed robust Average to High Average Performance and Low-Average to Average range verbal functions. These findings are not consistent with diagnostic criteria for intellectual disabilities such as mental retardation ASOS diagnostic algorithm and CARS2-ST findings do not meet cutoff scores suggestive of Autism or autism spectrum disorders. (Exh. 9)

4. Based on the assessments performed by Dr. Brooks and Dr. Greenwald, the agency found claimant ineligible for agency services. Claimant's mother timely filed a request for hearing in which she appealed the agency's denial of services based on her assertion that claimant was eligible for services due to having Autistic Disorder. The instant hearing ensued.

5. Dr. Greenwald testified during the instant hearing in conformity with his report. During his testimony he opined that the ADOS, module 1 is the "gold standard of objective assessment for Autism." He also testified that claimant's ability to complete the

entire WPPSI assessment, which allowed Dr. Greenwald to obtain a Full Scale Composite Score, is a further indication that he is not Autistic because it would be highly unusual for an Autistic child to be able to complete the entire WPPSI assessment. In sum, Dr. Greenwald concluded that claimant was not mentally retarded and did not suffer from Autistic Disorder. These findings and conclusions were consistent with those of Dr. Brooks following her 2009 assessment.

6. Mother produced several documents and records that contained references to Autism, ADHD, Aspergers, and mood disorders. Dr. Greenwald reviewed those records and testified that the documents were consistent with his findings and conclusions. There was nothing in the documents produced at the hearing that changed Dr. Greenwald's findings and conclusions.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a "Developmental Disability" as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely. . ." California Code of Regulations, title 17, section 54000 further defines "Developmental Disability" as follows:

"(a) 'Developmental Disability' means a disability that is attributable to mental retardation, 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 . . .

* * *

"(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.”

2. The facts, considered as a whole, reveal that claimant does not have a qualifying “Developmental Disability.” The burden rests on claimant to establish that he suffers from a qualifying “Developmental Disability” and, in this case, claimant failed to establish his eligibility (Autistic Disorder or Mental Retardation) by a preponderance of the evidence. (See Evid. Code, § 115.)

ORDER

The agency’s conclusion that claimant is not eligible for agency services is upheld.

DATED: July 17, 2012.

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(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.