

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

OAH No. 2013080312

Claimant,

Claimant,

and

San Diego Regional Center,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on November 13, 2013.

Claimant's mother represented claimant, who was not present for the fair hearing.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

The matter was submitted on November 13, 2013.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of mental retardation?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On June 27, 2013, SDRC notified claimant that she was not eligible for regional center services.

2. On July 10, 2013, claimant filed a fair hearing request appealing that decision, and this hearing ensued.

EVIDENCE PRESENTED AT HEARING

3. Claimant is currently a six-year-old female who asserted she was eligible for regional center services. Claimant has a genomic alteration on chromosome 22. She asserted that her condition causes mental retardation, which makes her eligible for services. Medical records introduced documented her genetic condition.

4. A May 15, 2013, Initial Psychological-Educational assessment Report, prepared by claimant's school district, concluded that claimant did not meet the criteria for Intellectually Disabled under the Education Code. Claimant did not qualify for special education services. She did not demonstrate a speech-language disorder that impacted her academic performance. Claimant's 2013 Individualized Education Program (IEP) report demonstrated that claimant did not have any gross motor deficits. The IEP concluded that special education services were not recommended for claimant.

5. Harry Eisner, Ph.D, SDRC Coordinator of Psychological Services, testified about his team's review of all available records and its determination that claimant did not qualify for services. Dr. Eisner testified about the wide range of conditions that can accompany claimant's chromosomal abnormality. He acknowledged that mental retardation can be one of those conditions. However, based upon his review of claimant's records, she does not have mental retardation. Dr. Eisner opined that whether using the criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM-IV-TR)*, or the criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, claimant does not have an intellectual disability. Dr. Eisner testified that nothing in any of the records he reviewed indicated that claimant has an eligible developmental disability. Dr. Eisner concluded that claimant did not qualify for regional center services.

6. Claimant's mother testified that claimant's sibling has the same chromosomal abnormality and receives regional center services based upon a diagnosis of mental retardation. However, as Dr. Eisner explained, there are a number of different

physical and developmental disabilities associated with the chromosomal condition, but that does not mean that every individual with the abnormality has mental retardation. As claimant's records indicate, she does not have mental retardation; she is not eligible for services.

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

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 identifies the state's role for persons with developmental disabilities.

4. Welfare and Institutions Code section 4512, subdivision (a) defines developmental disability.

5. California Code of Regulations, title 17, section 54000, defines developmental disability.

6. California Code of Regulations, title 17, section 54001, defines substantial disability.

EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. None of the documents introduced or the testimony offered demonstrated that claimant had a

diagnosis of mental retardation. The burden was on claimant to establish her eligibility for regional center services. As claimant introduced no evidence demonstrating that she was eligible to receive regional center services, her appeal of SDRC's determination that she is ineligible to receive services must be denied.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is not eligible for regional center services and supports is denied. Claimant is ineligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: December 2, 2013

MARY AGNES MATYSZEWSKI

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.