

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Agency.

OAH No. 2013110409

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on December 16, 2013.

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

Claimant was represented by his mother.

The matter was submitted on December 16, 2013.

ISSUES

1. Is claimant eligible for agency services?
2. Are further eligibility evaluations warranted?

FACTUAL FINDINGS

1. Claimant is five years old.
2. Claimant applied for agency services.
3. On October 15, 2013, the agency conducted a psychological assessment of claimant to determine if he qualified for services. Clinical Psychologist Thomas F. Gross reviewed claimant's records, including previous psychological evaluations; observed claimant; interviewed claimant's mother; and administered the Vineland Adaptive

Behavior Scale, the Childhood Autism Rating Scale 2nd Edition, and the Leiter International Performance Scale-R.

4. As a result of the October 15, 2013, evaluation, Dr. Gross authored a report, in which he set forth the following conclusions and recommendations:

[Claimant] does not qualify for Inland Regional Center services on the basis of Autistic Spectrum Disorder, Intellectual Disability, or a condition similar to mental retardation that would require treatment similar to that required by a person experiencing mental retardation. His performance on this occasion showed him to have borderline nonverbal intellectual ability.

¶ . . . ¶

I did not find [claimant] to exhibit restrictive, repetitive patterns of behavior, interests, or activities. Some minor finger flicking is noted. Otherwise he doesn't exhibit the kind of stereotyped/repetitive motor movements seen in children with Autism. No odd use of objects is reported. He isn't obsessive about routines or schedules.

[Claimant] is currently being mainstreamed in a regular kindergarten placement. His mother reports that [claimant] has an IEP and is supposed to get weekly speech/language therapy. . . .

By report and observation, [claimant] appears restless, unfocused, and inattentive. [Mother] might want to discuss

with [claimant's] pediatrician the possibility that [claimant] experiences Attention Deficit Hyperactivity Disorder (ADHD). After evaluating [claimant], thought should be given to discussing treatment options, including medication. (Exh. 5)

5. Claimant's most recent Individualized Education Program (IEP), dated May 10, 2013, revealed that claimant suffers from "Speech or Language Impairment (SLI)." There was nothing in the IEP indicating that claimant suffers from Autistic Spectrum Disorder, Intellectual Disability, or a condition similar to mental retardation that would require treatment similar to that required by a person experiencing mental retardation (fifth category).

6. IRC medical consultant, Dr. Borhan Ahmad, a Board Certified Pediatrician, testified that he reviewed claimant's medical records, including a 2010 physician note that indicated claimant may have mild cerebral palsy (CP). Based on the records review, Dr. Ahmad concluded that claimant is not eligible for agency services due to CP or seizure disorder. Dr. Ahmad testified that the previous mention of CP in claimant's medical records may have involved a mild case of CP. CP can improve over time. The overall review of claimant's records revealed that if he had CP, it may have resolved to the point where it is very minor in nature. Dr. Ahmad testified that if claimant has CP it clearly is not causing a "substantial disability."

7. Dr. Sara Hibbs, IRC staff psychologist, testified that she reviewed claimant's records, including Dr. Gross's psychological assessment report. Dr. Hibbs testified that she agrees with Dr. Gross. Claimant does not qualify for Regional Center services based on any mental conditions.

8. Mother testified that based on claimant's behaviors (hits other kids, sucks his thumb, is withdrawn, does not like groups or loud noises, and does not pay attention) in conjunction with references in past medical records to CP and suspected

Autism, she believes claimant qualifies for Regional Center services and she would like him to be found eligible for services; or, alternatively, to be reassessed for eligibility.

9. Dr. Hibbs was present for mother's testimony. In rebuttal, Dr. Hibbs testified that mother's testimony did not change Dr. Hibbs's opinion that claimant does not qualify for services based on CP, mental retardation, the fifth category, or Autistic Disorder.

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;
 - (2) Be likely to continue indefinitely;
 - (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.

2. 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.

3. The facts, considered as a whole, reveal that claimant does not have a qualifying "Developmental Disability" that results in "substantial disability." The burden rests on claimant to establish that he suffers from a qualifying, "substantial," "Developmental Disability" and, in this case, claimant failed to establish his eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

4. Claimant was fully psychologically evaluated by Dr. Gross on October 15, 2013, only two months prior to the instant hearing, and Dr. Ahmad recently performed a complete review of claimant's medical history. Both Dr. Gross and Dr. Ahmad concluded that claimant does not qualify for agency services. Given the recency of the evaluations, further evaluations are not warranted.

ORDER

- 1. The agency's conclusion that claimant is not eligible for agency services is upheld.
- 2. Claimant's request for further evaluations by the agency is denied.

DATED: December 30, 2013.

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.