

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014010248

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on March 27, 2014.

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

Claimant was represented by his grandmother and his authorized Educational Consultant/Advocate, Brian Allen (advocate).

The record was left open until 5:00 p.m. on April 10, 2014, so that the parties could submit concurrent written closing arguments. IRC's written closing was received on April 11, 2014. Claimant's advocate objected to consideration of IRC's written closing argument because it was not transmitted to the Office of Administrative Hearings until April 10, 2014, at 5:45 p.m. IRC was late; therefore, claimant's objection is sustained, and his motion that IRC's written closing argument not be considered is granted. IRC's written closing argument was not considered in evaluating claimant's eligibility for services.

The matter was deemed submitted on April 10, 2014.

## ISSUE

Is claimant eligible for agency services under the diagnosis of mild Intellectual Disability<sup>1</sup> (ID), or a disabling condition closely related to ID that requires treatment similar to that required for individuals with ID (commonly referred to as the "fifth category" for eligibility)?

## FACTUAL FINDINGS

1. Claimant is 15 years old.
2. Claimant applied for IRC services.
3. On December 13, 2013, IRC notified claimant of the following: "Inland Regional Center (IRC) completed Intake Evaluations which have shown that [claimant] does not have a substantial handicap as a result of Intellectual Disability (Mental Retardation), or Autistic Disorder. In Accordance with Welfare and Institutions Code, Section 4512, [claimant] is not eligible for Regional Center Services." (Exh. 1)
4. On January 9, 2014, claimant timely filed a Fair Hearing Request. The stated reason for claimant's request was: "Determined to be ineligible for regional center services. Further[,] Inland Regional Center failed to complete an Autism assessment." In Describing what "is needed to resolve your complaint," Claimant wrote: "Complainant should be deemed eligible for regional center services. Further[,] IRC should be ordered and agree to do a an [sic] Autism Assessment." (Exh. 2)

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<sup>1</sup> The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5) uses the term Intellectual Disability or Intellectual Developmental Disorder in place of the formerly used term, "Mental Retardation."

5. On March 18, 2014, claimant filed with the Office of Administrative Hearings, "Claimant[']s Notice of Amended Complaint[,] Statement of Issues[,] and Resolutions." In that document claimant described the issues as follows: "Issue 1"; "Is claimant determined to be ineligible for Regional Center supports and services[?];" and "Issue 2"; Claimant should be deemed eligible under the category of Mild Mental Retardation and/or the 5th category similar to Mental Retardation[?]" (Exh. D<sup>2</sup>)

6. Paul Greenwald, Ph.D., the IRC staff psychologist, testified during the hearing. He testified that he reviewed the following records: a January 22, 2013, Social Security Release of Information form; a February 7, 2013, School District Individual Education Program (IEP) report; a March 23, 2014, Social Security Program Operations Manual System report; a September 17, 2013, Juvenile Probation report; a September 19, 2013, School District Language, Speech, and Hearing Assessment; a September 24, 2013, IEP; an October 2, 2013, Psychological Assessment, by Dr. Edward J. Ryan (Dr. Ryan); a November 15, 2013, Psychological Report completed for the School District; and, a November 22, 2013, Psychological Report, by Dr. Edward B. Pflaumer (Dr. Pflaumer).

7. Dr. Greenwald testified his review of the documents revealed that claimant did not qualify for services under a diagnosis of ID, or the fifth category. According to Dr. Greenwald, claimant suffers from learning disabilities. Claimant has a history of cognitive impairment and suffers from pervasive deficits in learning with accompanying adaptive deficits. Claimant's September 24, 2013, IEP indicated that respondent had

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<sup>2</sup> Exhibit D was not received in evidence during the hearing. It was part of the court file and was marked and received in evidence as Exhibit D by the Administrative Law Judge after the hearing.

specific learning disabilities and other health impairments. Claimant's November 15, 2013, School District Psychological report also found that claimant suffered from specific learning disabilities and moderate to severe emotional disturbance. Claimant had been prescribed medications to control Attention Deficit Hyperactivity Disorder (ADHD) and a bipolar condition. Dr. Greenwald noted that Dr. Ryan had diagnosed claimant with Mild Mental Retardation as a "rule out diagnosis" for bipolar condition, ADHD, and autism; however, at the time Dr. Ryan assessed claimant, claimant was not taking his prescribed medications and that factor alone, in Dr. Greenwald's opinion, "skewed" Dr. Ryan's findings and conclusions. In other words, a complete review and evaluation of claimant's records caused Dr. Greenwald to "rule out" mental retardation as a diagnosis. Dr. Greenwald believed that Dr. Pflaumer's November 22, 2013, Psychological report supported Dr. Greenwald's evaluation of Dr. Ryan's findings and conclusions. In the "interpretation of data" section of Dr. Pflaumer's report, Dr. Pflaumer stated:

[Claimant's] scores during the testing at IRC fell into the deficit range, as did the testing with Dr. Ryan. However, these results cannot be deemed equivalent to a developmental disability since a) [Claimant] had been diagnosed with ADHD and individuals with ADHD earn lower scores than their actual potential, and b) the presence of a developmental disability must be confirmed from other sources, especially sources such as the school among examinees of school age . . . (Exh. 6.)

8. Dr. Greenwald was the only psychological expert who testified during the hearing. Dr. Greenwald was available for questioning about his opinions while Dr. Ryan and Dr. Pflaumer were not. Dr. Greenwald credibly testified that claimant suffered from a

psychiatric condition and specific learning disabilities; conditions expressly excluded by the Lanterman Act as diagnoses that would make one eligible for regional center services.

## 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.

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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 is not eligible for IRC services due to a diagnosis of ID or under the fifth category.

4. 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.)

## ORDER

IRC's conclusions that claimant is not eligible for agency services are affirmed.

DATED: April 21, 2014.

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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.**