

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014120482

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 19, 2015, in San Bernardino, California.

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

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

The matter was submitted on February 19, 2015.

ISSUE

Is IRC required to provide intake services, including an assessment of claimant, to determine if he is eligible for regional center services under the Lanterman Act based on intellectual disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 22-year-old young man who lives with his mother.

2. Claimant's mother sought regional center services for claimant based upon her claim that he has an intellectual disability.

3. By letter dated November 17, 2014, IRC advised claimant that it reviewed his records and determined that "no 'intake' services can be provided at this time because the records indicate that [claimant did] not currently have a 'substantial disability'" and he was not eligible for IRC services.

4. On December 8, 2014, claimant's mother signed a Fair Hearing Request appealing IRC's decision. In the hearing request claimant's mother stated that she disagreed with IRC because claimant's doctors and teachers recommended that claimant participate in IRC's programs.

5. On December 16, 2014, IRC representatives and claimant's mother met for an informal meeting to discuss claimant's Fair Hearing Request. The parties exchanged information but did not reach a resolution.

CLAIMANT'S SCHOOL RECORDS

6. Claimant received special education services in high school. An Individual Education Programs (IEP) that was developed for claimant by the Riverside SELPA in August 2014 was presented in evidence. The IEP noted that claimant's "Original Special Ed Entry Date" was January 13, 2012, when claimant was 19 years old. Earlier IEPs were not available at the hearing.

The 2014 IEP was developed when claimant was almost 22 years old and in twelfth grade. It provided that he was eligible for special education services based on "Emotional Disturbance." Notes in the IEP state that claimant "has been diagnosed with schizoaffective disorder, bipolar type, which significantly affects his ability to participate and learn without special education supports." No other disability was determined. The IEP indicated that claimant's parent initiated claimant's referral for special education services in October 2011.

Comments in the IEP about claimant's academic progress included that claimant "can read from 7th grade tests but struggles with comprehension without direct teacher support;" has difficulty writing sentences and paragraphs without teacher support; can do basic math but has trouble with algebra and geometry; and is "independent in money transactions." Regarding his social and emotional status, comments in the IEP state that claimant "has limited ability to socialize or make friends. . . . He can forget recently learned material over a break He has anxiety in crowds" The IEP notes that claimant takes medication and sees a psychiatrist once a month. The IEP stated that claimant would be working with a Department of Rehabilitation counselor to find employment. A doctor reported that claimant "has difficulty with his daily functionality at the personal hygiene level and his adaptive daily living skills. He needs prompting, reminders and monitoring."

The IEP provided that claimant was to receive full-time home instruction because his "significant mental health concerns necessitate home instruction."

On August 21, 2014, claimant and claimant's mother signed the IEP and placed their initials next to the sentence that read, "I agree to all parts of the IEP."

7. Claimant's mother submitted two report cards. One report card was a "Fourth Six Week Grade Report that showed the grades claimant achieved in the 10th grade up to February 2009. In the first six weeks of school, claimant received a B+, C, A, F and two classes with no mark. For the period January through February 2009, claimant received five Fs and one B (in Weight Training).

The second report card showed the grades claimant achieved in the second semester of twelfth grade. Out of six classes, claimant received four C- grades, one F and one NM (no mark).

8. No other school records were offered or received into evidence.

TESTIMONY OF SANDRA BROOKS, PH.D.

9. Sandra Brooks, Ph.D. is a licensed clinical psychologist. She has been employed by IRC as a staff psychologist for eight years. Her duties include reviewing records and documentation to assist IRC in determining whether a prospective consumer is eligible for IRC services because he or she is intellectually disabled, has autism or an autism spectrum disorder, or falls within the 5th category. She stated that, to be eligible for regional center services under the intellectually disabled category, a consumer must show sub-average intellectual functioning, usually determined through IQ testing, and have substantial deficits in daily living skills. The disabling condition must exist before the consumer is eighteen years old.

10. Dr. Brooks reviewed claimant's sparse records. She noted that claimant was not provided special education services until October 2011 when he was one month shy of 19 years old and that the services were provided based on emotional disturbance due to a diagnosis of schizoaffective disorder. Dr. Brooks stated that mental health disabilities alone do not qualify a consumer to receive IRC services and that none of the information contained in the records indicated to her that claimant has a qualifying disability that would entitle him to IRC services.

11. Dr. Brooks stated that claimant's failing grades were not evidence of an intellectual disability, but were a measure of his academic performance. She noted that the comments on claimant's tenth grade report card showed that he was in danger of failing because he was working below ability and that he had missing, incomplete, or late work. Further, claimant's academic performance and grades could be affected by his emotional disturbance. Also, a person with emotional disturbances can act in an immature manner and engage in conduct that may be dangerous to himself or herself.

12. Dr. Brooks testified that IRC is not required to assess every person who seeks regional center services; they are obligated to perform an assessment only if there

is a reasonable suspicion that the individual has a developmental disability. In claimant's case, there was no history of sub-average functioning. Claimant was not referred for special education services until he was 19 years old, and he was provided services based upon a mental health diagnosis, not for having an intellectual disability. Dr. Brooks stated that, had there been a concern about claimant's intellectual abilities, the school district would have tested him, and the results would be in his records.

13. An individual seeking IRC services is required to produce records showing eligibility for regional center services. If the individual is unable to obtain all or some of the required records, and if the IRC has a reasonable suspicion that the individual may be eligible for services, IRC will request records on the individual's behalf. However, if the documents provided do not show a potential basis for eligibility, and there is no other reason to suspect a person may be eligible for services, IRC will not request additional records.

14. Dr. Brooks determined that claimant's history and the information contained in his records is not consistent with a person who has an intellectual disability, and he is not eligible for IRC services.

CLAIMANT'S MOTHER'S TESTIMONY

15. Claimant's mother testified that claimant was a sickly child and suffered from asthma. He was held back in the first and second grades. After that, claimant was just passed on even though his grades were Cs and Fs. Claimant's mother was frustrated that claimant was passed on with such bad grades. Claimant's mother claimed that claimant received special education services in the second and third grades and was provided speech therapy and an aid in math.

16. Claimant graduated from high school in December 2014; he will "walk" in the graduation ceremony at the end of March 2015.

17. Claimant's mother stated that she attempted to obtain all of claimant's

records from each school he attended since elementary school, but she was unable to do so because his records were missing. She was able to get only the records that were submitted at the hearing. Claimant's mother testified that claimant was assessed by the school district in 2012, but it was not a complete assessment. Claimant's mother did not present results from a 2012 assessment.

18. Claimant's mother stated that medical records show that claimant was diagnosed with an emotional disturbance at least since the age of 14; the medical records were not submitted at the hearing. Claimant's mother said that claimant underwent a "drastic emotional change" in his teens. Claimant's mother claimed that claimant's emotional disturbances are hereditary on his father's side. Her husband hid the fact that there was mental illness in his family, and she learned of it only when claimant was 17 years old. She was sorry that she did not know about this history earlier as she would have been proactive and taken claimant for mental health evaluations earlier.

19. Victor Community Service evaluated claimant for mental health concerns in April 2010. He has seen a psychiatrist once a month since the evaluation.

20. The Department of Rehabilitation (DOR) evaluated claimant for employment assistance; however, the counselor at DOR advised claimant's mother that they were not able to work with claimant to help him because he needed to be monitored and reminded all the time.

21. Claimant receives 23 hours per month of in-home support services. The services are focused on daily living skills such as providing meals for himself and cleaning his room. Claimant's mother must control everything because claimant cannot do things on his own; he is a danger to himself if he is home alone. She tries not to leave him alone for more than one or two hours because she is frightened of what he might do.

22. Claimant's mother believes that claimant has significant problems in his speech, language, how he thinks, and how he acts. She stated that he sometimes acts like a four year old. Even though claimant graduated from high school, the course work he completed in the twelfth grade was at the fourth grade level. On occasion claimant's mother has had to take claimant to her work because she did not want to leave him alone. She said he talks to her clients and others in the office as though he were in the fourth grade. People stare at claimant, but she tries not to be bothered by it.

23. Claimant's mother is motivated to seek IRC services because she wants claimant "to be a person who is successful at life." She wants to do what is right for him. Currently claimant is at home and doing nothing.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to

lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to mental retardation¹, 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;

¹ The Welfare and Institutions Code was amended effective January 1, 2015, to eliminate the term “mental retardation” and replace it with “intellectual disability.” The California Code of Regulations has not yet been amended to reflect that change.

- (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.

[¶] . . . [¶]

6. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services and supports to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. "Services and supports" for a person with a developmental disability can include diagnosis and evaluation. (Welf. & Inst. Code, § 4512, subd. (b).)

8. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs" (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

9. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for

regional center services found in the Lanterman Act.

EVALUATION

10. Claimant's Fair Hearing Request sought to require IRC to provide an assessment to determine if he qualified to receive services and supports from IRC based upon an intellectual disability. Claimant did not prove by a preponderance of the evidence that there was sufficient evidence for IRC to believe he has an intellectual disability such that IRC is required to provide a further assessment or intake services.

Claimant received special education services when he was almost 19 years old based upon his having an emotional disturbance. According to his mother, claimant was diagnosed with a mental illness when he was 14 years old. Solely psychiatric disorders do not qualify as a disabling condition for purposes of determining eligibility for regional center services. Psychiatric disorders can negatively impact academic performance, social skills and the ability to perform daily tasks of living. There is no evidence that claimant has an intellectual disability.

IRC properly determined, based upon the records reviewed that claimant is not eligible for IRC services. His school records do not support a finding that claimant has an intellectual disability.

ORDER

Claimant's appeal from Inland Regional Center's determination not to provide intake services, including performing an assessment, based upon an asserted developmental disability of intellectual disability is denied.

DATED: March 10, 2015

_____/s/____

SUSAN J. BOYLE

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.