BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Agency.	OAH No. 2015010828

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on April 1, 2015.

Jennifer Cummings, Program Manager, Fair Hearings & Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's mother, his representative, was properly served the "Order Granting Continuance and Notice of Hearing," setting the hearing in this matter for April 1, 2015, at 1:00 p.m. Venue for the hearing was the Inland Regional Center facility, located at 1365 South Waterman Avenue, San Bernardino. Neither claimant nor his representative appeared for the hearing. Telephone calls were made to the telephone numbers of record, and the Administrative Law Judge waited until 1:30 p.m. to commence the hearing. There was no good cause for claimant's failure to appear. At 1:30 p.m., IRC began presenting evidence in support of its position that claimant is no longer eligible for Regional Center services.

The matter was submitted on April 1, 2015.

ISSUE

Does claimant continue to be eligible for Regional Center services?

FACTUAL FINDINGS

1. Claimant is seven years old.

2. Claimant began receiving agency services as part of the Early Start Program. In 2010, when claimant turned three years of age, he transitioned out of the Early Start Program. The transition team reviewed claimant's records on November 3, 2010, to determine if he was eligible for Regional Center services under the Lanterman Act. Dr. Sara DeLeon, an IRC Staff Psychologist, was a member of the eligibility determination team.

SUMMARY OF DR. DELEON'S TESTIMONY

3. The November 3, 2010, eligibility determination was based on a records review and focused mainly on claimant's developmental level. Based on claimant's developmental level, the team concluded that claimant was eligible for services under the diagnosis of severe mental retardation (currently referred to as Intellectual Disability). However, since developmental level is not a reliable predictor of intellectual development/intelligence, the team recommended "Review of eligibility status" in "3 yrs at IRC."

4. On October 13, 2014, the IRC eligibility team concluded that claimant was not eligible for Regional Center services on the basis of Intellectual Disability, autism spectrum disorder, cerebral palsy, epilepsy or the fifth category. The team's conclusion was supported by a January 13, 2011, School District Psychoeducational Assessment report; a September 10, 2013, Psycho-Educational Assessment report; and a May 22, 2014, Riverside County SELP Individualized Education Program Amendment report. Claimant was notified of the team's conclusion, and he filed a Fair Hearing Request

dated January 16, 2015. The Fair Hearing Request set forth the following "Reason(s) for requesting a fair hearing:" "It is our belief that [claimant] is a candidate for eligibility for services due to his neurological disorder. See attached doctor[']s notes." In the section of the Fair Hearing Request that asked for a description of what is needed to resolve claimant's complaint, claimant stated: "That [claimant] would be tested by the Regional Center. Was supposed to be tested Oct. 30, 2014. Due to family emergency was unable." (Exh. 2).

5. Dr. Paul Greenwald, another IRC Staff Psychologist, psychologically assessed claimant on February 17, and March 4, 2015. As a result of the psychological assessments Dr. Greenwald reached the following diagnostic impressions:

300.02	Generalized Anxiety Disorder by history
300.3	Obsessive Compulsive Disorder by history
315.1	Specific Learning Disorder with impairment in mathematics by history
(315.39)	Rule out Speech Sound Disorder (Exh. 18)

Based on the diagnostic impressions, Dr. Greenwald made the following recommendations:

> 1. That [claimant] be considered <u>not</u> eligible for continuing IRC services under Autism Spectrum Disorder (ASD) or Intellectual Disability (ID) diagnostic criteria as defined in Welfare and Institutions Code, Section 4512, and Title 17, California Code of Regulations, Section 54000. . . . (Exh. 18, underline in original)

6. Based on Dr. DeLeon's review of Dr. Greenwald's assessment; other documents, including school district assessments; and her actual familiarity with claimant, Dr. DeLeon testified that IRC's original determination that claimant was eligible for Regional Center services was clearly erroneous.

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. As set forth in Finding 3, on November 3, 2010, claimant was found eligible for agency services based on a diagnosis of severe Intellectual Disability. California Welfare and Institutions Code section 4643.5, subdivision (b) provides: "An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from the regional center unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." In the present instance, the reassessment conducted by Dr. Greenwald was "comprehensive" within the meaning of Welfare and Institutions Code section 4643.5, subdivision (b); not only that, the evidence established that there have been significant changes in claimant's condition since 2010. Consequently, the evidence, considered as a whole, revealed that the original determination that claimant had a developmental disability (severe Intellectual Disability) was "clearly erroneous."

ORDER

IRC's conclusion that claimant is no longer eligible for agency services is affirmed.

DATED: April 13, 2015.

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.