

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015100537

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 21, 2016.

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

Brian Allen, Educational Advocate, represented claimant. Claimant's mother was also present throughout the administrative hearing.

The matter was submitted on January 21, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act as a result of cerebral palsy or an intellectual disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant has been receiving Early Start services since March 2013 based on a

diagnosis of cerebral palsy. Services terminated on October 22, 2015, his third birthday. Claimant's mother applied to IRC so claimant could obtain services under the Lanterman Act.

2. On September 28, 2015, IRC notified claimant that he was not eligible for regional center services because the records he provided to IRC did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment needs as an individual with an intellectual disability.

3. On October 15, 2015, claimant filed a Fair Hearing Request appealing IRC's determination. In the Fair Hearing Request, claimant asked IRC to reconsider its determination and find claimant eligible for regional center services based on the diagnosis of cerebral palsy and "cognitive delays."

4. On October 26, 2015, IRC held an informal meeting with claimant's mother and representative. During the meeting, the parties discussed claimant's eligibility for regional center services based on a diagnosis of cerebral palsy. IRC agreed to assess claimant for services under a diagnosis of intellectual disability if, following a school assessment scheduled for November 5, 2015, records demonstrated that an assessment for intellectual disability was necessary.

5. Based on all the records provided, IRC adhered to its original determination that claimant was not eligible for IRC services.

6. IRC does not dispute claimant's diagnosis of cerebral palsy but asserts that claimant is not substantially disabled in three or more major life activities. IRC disputes the assertion that claimant is intellectually disabled.

#### DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

7. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains the diagnostic criteria used for intellectual disability.

Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

## CEREBRAL PALSY

8. Cerebral palsy is a condition that affects body movement and posture. The physical problems are worse for some people than for others. Some people with cerebral palsy have only a slight limp or difficulty walking while others may have little to no control over their arms, legs, mouth, or tongue. Depending on the severity of the symptoms, people with cerebral palsy can have problems eating, speaking, and controlling their muscles. Severe forms of cerebral palsy can lead to seizures or intellectual disabilities.<sup>1</sup>

## CLAIMANT'S BACKGROUND

9. Claimant is a three-year old male. Claimant suffered cardiac arrest during a breech birth requiring a vigorous forceps delivery. The traumatic delivery caused intracranial, subdural, subarachnoid, and intraparenchymal hemorrhaging. Claimant has a history of low APGAR scores. The conditions of his birth also led to neonatal asphyxial encephalopathy, quadriplegic cerebral palsy, left-sided torticollis<sup>2</sup>, shoulder dystocia and a left brachial plexus injury. Claimant suffers from sleep disturbances; anemia; periodic limb

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<sup>1</sup> This summary was obtained from the Individualized Health Care Plan prepared for claimant by Judi Hawkins, R.N., a pediatric nurse practitioner at the Moreno Valley Unified School District, on September 10, 2015.

<sup>2</sup> Torticollis is a condition that causes the neck muscles to contract resulting in the head twisting to one side.

movements; speech delay; and sensory disturbances.

Claimant receives speech and language therapy; physical therapy; and occupational therapy for sensory integration disorder, oromotor weakness (drooling), dysphagia<sup>3</sup>, and fine motor delays. He trips and falls frequently and wears a helmet at school to prevent injury. Claimant suffers from constipation and encopresis due to abnormal muscle tone in his gastrointestinal tract attributable to his cerebral palsy

#### EVIDENCE PRESENTED BY IRC

##### Testimony of Borhaan Ahmad, M.D.

10. Dr. Ahmad has served as a medical consultant at IRC for fifteen years. He is a board-certified pediatrician and has worked as a general pediatrician at Loma Linda University Medical Center for twenty years. Dr. Ahmad testified at the hearing.

Dr. Ahmad explained that cerebral palsy is “any insult to the brain” that may cause a patient to suffer paralysis, spasticity, and intellectual disability. He explained that there are many “types and intents” of cerebral palsy and not all are considered substantially disabling. Dr. Ahmad stated that, to qualify for regional center services, a three-year old child must have significant functional limitations three or more of the following areas: self-care, receptive and expressive language, and learning.<sup>4</sup> Dr. Ahmad reviewed claimant’s medical reports completed on November 9, 2015, by Linh Tieu, D.O.; December 1, 2015, by Priscilla Chee, M.D.; and November 27, 2013, by Chitnis Shubhangi, M.D. Based on those

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<sup>3</sup> Dysphagia, according to Judi Hawkins, R.N., is a condition that results in feeding and swallowing difficulty, food pocketing and weak chewing strength.

<sup>4</sup> Dr. Ahmad explained that the other areas identified in the Lanterman Act – capacity for independent living, self-direction, mobility, and economic self-sufficiency – only apply to the adult population.

reports, Dr. Ahmad concluded that claimant's cerebral palsy is mild and claimant did not have significant functional limitations in self-care, receptive and expressive language, learning, or mobility. Dr. Ahmad did not conduct a medical assessment of claimant.

#### Testimony of Michelle Lindholm, Ph.D

11. Dr. Lindholm is an IRC staff psychologist with 21 years of experience in clinical psychology. She is board-certified in behavioral analysis and regularly evaluates individuals for eligibility under the Lanterman Act.

Dr. Lindholm reviewed all of claimant's records provided to IRC, except the medical reports reviewed by Dr. Ahmad. Dr. Lindholm explained that the eligibility criteria for intellectual disability includes substantially lower intellectual functioning than typical peers of the same chronological age, including multiple disabilities and adaptive functioning problems. Based on her review of the records, she determined that claimant did not appear to be eligible for regional center services and nothing in the records reflected that claimant had an intellectual disability. Dr. Lindholm did not conduct a psychological assessment of claimant.

#### CLAIMANT'S RECORDS

##### Recent Reports

12. On December 1, 2015, claimant was evaluated by Dr. Priscilla Chee, a child neurology fellow, and Sarah Roddy, M.D., a doctor in pediatric neurology. Claimant was three-years old at the time of the evaluation. The evaluation included personal observations, review of medical records, and interviews with claimant's mother. The report stated that claimant had a speech delay and functioned at the 24-month level. Claimant was able to name his friends, wash and dry his hands with assistance, name pictures, and jump. He was not able to put on a t-shirt, or balance on each foot for one second. Claimant was responsive, aware, and had a steady regular gait. His tone and reflexes were

normal. Based on claimant's historical medical problems, claimant was urged to continue occupational, physical, and speech therapy.

13. On November 9, 2015, claimant was evaluated by Dr. Tieu. The evaluation included personal observations, review of medical records, interviews with claimant's mother, and a physical exam. Dr. Tieu noted that according to the school district, claimant may need safety precautions for balance, posture, body movement, and assistance with fine motor activities. Claimant may have visual field problems in his left eye. Dr. Tieu reviewed reports from Rancho Physical Therapy completed in November 2014 and June 2015 that reflected claimant had impaired articulation substantially limiting communication, impaired expressive language, syntax, and oral motor skills. A September 23, 2014, report indicated that claimant had moderate to severe delayed expressive speech.

During the exam, claimant cooperated with Dr. Tieu and displayed good eye contact. He took off his shoes with direction and assistance. He was not able to take off his shirt or unzip a zipper without assistance. He spoke infrequently, his words were unclear, and he had difficulty with some commands. Claimant had good muscle strength and resistance with upper and lower extremities, climbed onto a chair, and got down without any problems. He walked with an abnormal gait and sometimes tripped on his own feet.

Dr. Tieu's diagnostic impressions were that claimant had mild quadriplegic cerebral palsy; fine motor delay; proximal lower extremity weakness affecting gait, balance, and stability; expressive language delay; torticollis; constipation; encopresis; sensory integration disorder; periodic limb movement disorder; oral motor weakness with resultant dysphagia, feeding disorder, and drooling; and behavioral problems.

Dr. Tieu concluded that claimant was at risk for injury due to falls and requires assistance with self-care activities; had problems with expressive language and would

benefit from speech therapy; suffered from balance and stability problems due to lower extremity weakness and needs physical therapy; and had persistent mild torticollis that may affect balance and visual field attention. Dr. Tieu concluded that while claimant was not eligible for regional center services<sup>5</sup> due to “mild” cerebral palsy, he would benefit from continued occupational therapy for sensory integration and fine motor skills.

14. A September 1, 2015, nursing assessment and a September 10, 2015, Individualized Health Care Plan was completed by Judi Hawkins, R.N. Both documents contained claimant’s medical history and reporting by claimant’s mother regarding the concerns she had for claimant’s continued development. However, neither document contained diagnostic conclusions based on personal observations or tests conducted by Nurse Hawkins.

#### Older Reports

15. Claimant submitted an In-Home Supportive Services Program Health Care Certification Form showing claimant receives services for cerebral palsy, hemiplegia, anemia, cognitive delay and torticollis. However, the form was of limited value in determining whether claimant is substantially disabled because it is unclear where the information came from or what symptoms were associated with each of the afflictions.

16. An Individualized Family Service Plan was completed on July 16, 2015. Claimant was a few months short of three years old at the time of the observations contained in the plan. The plan showed that claimant was functioning at or just below his

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<sup>5</sup> Dr. Tieu did not refer to the Lanterman Act or state any other regulatory or statutory criteria that she used to evaluate claimant for purposes of eligibility. It is unclear whether she evaluated claimant under Lanterman Act principles or merely evaluated claimant and referred to his attempt to obtain IRC services for purposes of documenting information obtained from other records or parent interviews.

age level in most areas, with the exception of communication. Claimant's expressive and receptive language was limited to that of a 24 month old.

17. A September 29, 2014, report completed by Lauren Cozma, physical therapist, reflected that claimant, who was two years old at the time, followed simple verbal commands but would not communicate verbally. He walked independently, ascended stairs, and appeared to be physically independent as age-appropriate. She noted that she was unable to assess sensory processes because of claimant's young age.

18. On November 13, 2014, a progress report was completed at Pediatric Services, Inc. At the time of the report, claimant was two years old. The report stated that claimant was making "good progress" in most areas of development and was able to use a few words. He loved running and playing outdoors, and could jump. In the area of fine motor skills, claimant enjoyed working with puzzles, pegs, beads, and scribbling with crayons. Claimant was able to follow simple directions and match colors. The report stated, as reported by claimant's mother, claimant was able to feed himself and drink from a sipper cup. The report reflected that claimant was developing normally in most areas for his age, but was functioning at the level of a 16 – 20 month old in the areas of expressive/receptive language and self-help.

19. On November 27, 2013, claimant was evaluated by Dr. Shubhangi. At the time of the evaluation, claimant was 13 months old. Dr. Shubhangi determined that claimant had mild right ankle spasticity, mild drooling, walked "well" without support, used speech and language appropriate for his age, and overall appeared to be developing "well."

#### TESTIMONY OF CLAIMANT'S MOTHER

20. Claimant's mother is very active in claimant's care. According to claimant's mother, claimant has significant functional limitations. For example, he has problems with mobility, fine motor skills, and self-care issues. He has no muscle tone in his



gastrointestinal tract so he cannot control his bowel movements. He is often constipated. Claimant falls very often because he does not put his arms out to protect himself after tripping over his own feet. Claimant wears orthopedic shoes to try and help prevent falls and wears a helmet to prevent injury. Claimant's facial palsy and dysphasia cause claimant to have oral motor weakness. Because claimant cannot control his facial muscles he is a choking risk. He pockets food on his left side and cannot chew. He often bites his tongue when trying to eat. Claimant's mother must enrich his food with supplements because claimant does not eat very much due to the problems he has with eating.

Claimant suffers sleep disturbances and has periodic limb movement during sleep. He is taking medication for both.

Claimant cannot pull a shirt over his head and struggles with pulling off diapers, and operating zippers and buttons. Claimant's mother acknowledged that he is a bit on the young side so she is not overly concerned about him not being able to open and close a button.

Claimant has expressive language delay, speaks infrequently, and is cognitively delayed. Claimant understands simple concepts and simple directions but does not have the cognitive ability to ask questions. He does not have awareness or the ability to understand his surroundings. For example, several people came to visit while claimant was downstairs at his home. The people went upstairs and were making noise upstairs. Claimant asked, "what is that." Claimant's mother stated that it is as if claimant has no awareness of his environment. Claimant has urinated on himself before; claimant's mother stated that it was as if claimant had no awareness of his own bodily functions.

Claimant's mother believes that the Early Start Program has benefitted claimant despite his continuing significant functional limitations in the areas of self-care, language, and mobility. She is seeking regional center services because she wants claimant to be able to live a life comparable to that of his peers.

## 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 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent

the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. A developmental disability "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act.

5. California Code of Regulations, title 17, section 54000 provides:

"(a) 'Developmental Disability' means a disability that is attributable to mental retardation<sup>6</sup>, 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

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<sup>6</sup> Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

- 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."
6. 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."

## 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. The burden was on claimant to establish his eligibility for regional center services.

Insufficient evidence was presented to show that claimant has an intellectual disability. Although some records mentioned "cognitive delay," none of the records described what basis led to that conclusion. Moreover, there was no testimony from any witnesses to indicate that claimant had a "cognitive delay". Claimant is therefore not eligible for regional center services based on intellectual disability.<sup>7</sup>

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<sup>7</sup> Claimant is young. As he develops, he may manifest an intellectual disability and if

A preponderance of the evidence established that claimant is eligible for regional center services based on a diagnosis of cerebral palsy. It is not disputed that claimant has cerebral palsy but IRC did dispute that claimant has significant functional limitations in three or more major life activities.

The credible testimony of claimant's mother established that claimant has significant impairment in his mobility, receptive and expressive language, and self-care. Claimant falls frequently and requires a helmet to prevent injury.<sup>8</sup> Claimant processes some information but is unable to express himself at the level of a three-year old. Claimant suffers from toileting problems attributable to muscular problems in his intestinal tract as a result of the cerebral palsy. Claimant must have assistance eating; he must be supervised and claimant's mother must cut up his food in tiny bits to prevent pocketing of food and choking due to his dysphagia and weak facial muscles. IRC did not conduct any independent evaluations of claimant and did not present sufficient evidence to refute the contentions of claimant's mother.

The older medical reports submitted described claimant as developing well; but they were of limited value given claimant's extremely young age at the time the reports were completed. The more recent reports corroborate much of what claimant's mother asserted. The most recent medical report completed on December 1, 2015, by Dr. Chee and Dr. Roddy confirmed claimant's speech delay and indicated his speech was at the level of a 24-month old. Dr. Tieu's November 9, 2015, report referred to physical therapy reports that stated claimant had "substantial" limitations in communication, expressive

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so, may qualify for regional center services on that basis.

<sup>8</sup> Although the failure to break his fall may be attributable to his sensory disorder in that he does not want to put his arms out to touch certain surfaces, the cerebral palsy – and not his sensory disorder – is what causes him to fall in the first place.

language, syntax, and oral motor skills. She also observed claimant tripping on his own feet.

The totality of the evidence established that claimant has significant functional limitations in the areas of self-care, receptive and expressive language, and mobility, attributable to his cerebral palsy. Accordingly, he is eligible for regional center services.

## ORDER

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

DATED: February 3, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY J. BELVEDERE  
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.**