

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016090383

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 24, 2016.

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

Claimant's mother represented claimant and appeared telephonically.

The matter was submitted on October 24, 2016.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of an intellectual disability?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 23-year-old male who lives with his parents. Claimant was born at 25 weeks gestation by emergency Cesarean section. His Apgar score at birth was 0/7 at five minutes, and he weighed 1 pound 10 ounces. At birth, claimant was diagnosed with neonatal encephalopathy, or abnormal brain functioning. Claimant was hypoxic, and needed to be intubated for some time. Claimant received special education services throughout his elementary and secondary education, based on the category of "other health impairment."

2. On November 2, 1994, IRC assessed claimant and determined he was eligible for Early Start services under applicable law. Following claimant's third birthday, Early Start services terminated. In 2011 and 2013, claimant, through his authorized representative, applied for regional center services but was denied because the records claimant 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.

### JURISDICTIONAL MATTERS

3. On August 25, 2016, IRC notified claimant that he was not eligible for regional center services because the records claimant 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.

4. On August 30, 2016, claimant's mother filed a fair hearing request stating the following:

[Claimant] was a previous recipient of IRC [services]. Documented CP, BPD, developmental delays, seizure disorder, premature birth, oxygen dependence, [and] neurological structure malformations including large ventricles, hydrocephalus, [and] hypoxia.

5. IRC broadly construed claimant's fair hearing request as a request for services under the category of intellectual disability.<sup>1</sup>

6. On August 30, 2016, IRC representatives and claimant's mother attended an informal meeting to discuss claimant's fair hearing request. Claimant's mother provided additional school and medical records for consideration. The additional records were reviewed. Following the secondary review, IRC adhered to its original determination that claimant was not eligible for regional center services.

#### 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 to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social

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<sup>1</sup> Claimant's mother agreed at the hearing that it was under that category that she was seeking services, although she referred to it as "developmental delay."

responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range. The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socioculturally matched peers.

#### EVIDENCE PRESENTED BY IRC

8. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor, Senior Consumer Services Coordinator, and Psychological Assistant. She has been involved in assessing individuals who desire to obtain IRC services for over 26 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. Dr. Stacy qualifies as an expert in the diagnosis of intellectual disability and in the assessment of individuals for IRC services.

9. Dr. Stacy reviewed all of the records provided by claimant. She concluded that, based on the records provided, claimant did not qualify for regional center services based on a diagnosis of intellectual disability because the records did not reflect an intellectual disability that originated prior to the age of 18.

10. Regarding an April 12, 2010, psychoeducational summary completed by claimant's school psychologist when claimant was 16 years old, Dr. Stacy pointed out that claimant's IQ score was in the average range as were his verbal skills and academic skills. Claimant's adaptive behaviors, language skills, and psychomotor functioning were all average or age-appropriate. Dr. Stacy reviewed the summary of claimant's past testing contained in the 2010 psychoeducational summary, and also noted the following: On the Weschsler Intelligence Schedule for Children, Fourth Edition,

claimant's scores were in the average range. On the Naglieri nonverbal ability test, claimant's scores were also within the average range. In 2007, when claimant was 13, his academics were in average range, his full scale IQ was in the borderline average range, and his index scores were in the low average range.

11. Regarding claimant's August 17, 2011, Individualized Education Program (IEP), Dr. Stacy noted that claimant was served under the category of "other health impairment" and not intellectual disability, cerebral palsy, autism, or any other disability that would qualify a person for regional center services. The IEP showed claimant's cognitive abilities were average, his ability to communicate was not impaired, his motor development was not impaired, and his social-emotional development was not impaired. Although claimant required a small classroom setting in order to help him achieve mastery in the subject matter, there was no indication that claimant's abilities fell below the average range.

Also contained within the IEP under the social/emotion section was a paragraph indicating that claimant had been hospitalized in 2009 for a "self-injurious attempt" and that he was on medications for a "psychiatric disorder." Claimant also admitted past alcohol abuse, depression, hallucinations, and behavioral problems. Dr. Stacy explained that none of these conditions qualify a person for regional center services under the Lanterman Act.

12. The most recent assessment completed was a neuropsychological assessment in June 2016. In that assessment, claimant was evaluated using 20 different objective and subjective tests. Claimant was 22 years old at the time of the assessment. Claimant's general intellectual functioning showed he was in the mild level of disability when compared to persons of his age. Claimant's overall academic functioning measured in the average range. Claimant's adaptive functioning measured in the "impaired" range. Overall, claimant's executive functioning was "generally impaired." The

resulting diagnosis was a mild intellectual disability. Further, the assessment contained diagnoses of Attention Deficit Hyperactivity Disorder, Persistent Depressive Disorder, Intermittent Depressive Episodes, and Anxiety, among other things. Dr. Stacy explained that all of these conditions could easily affect a person's ability to test well, and could explain the lower intellectual functioning claimant now experiences at 22 years of age. Dr. Stacy concluded that, although this assessment showed claimant as impaired, the assessment did not occur until claimant was 22 years old and contradicted all the other records discussed above that show claimant functioning at an average level prior to the age of 18. Thus, this most recent assessment did not alter Dr. Stacy's opinion that claimant did not meet the criteria for intellectual disability under the DSM-5.

#### CLAIMANT'S MOTHER'S TESTIMONY

13. Claimant's mother is a registered nurse. She testified at length about the difficult birth she experienced with claimant and the problems that resulted as a consequence of that difficult birth.

Claimant's mother explained that claimant was in special education during his entire educational life for a reason; he had fine motor skill issues, speech problems, and generally had no friends for almost 15 years. Claimant's mother felt that because her son spent so many years isolated, it affected his speech, learning, and socialization.

Claimant's current life consists of sitting in his room and playing video games. Claimant's mother will give him a list of chores to do that includes self-care tasks like brushing his teeth and taking a shower. She stated that if she did not tell claimant what to do regarding self-care, he would not take care of himself. She stated that claimant would not even eat if she did not tell him to do so.

Claimant's mother testified that claimant had problems processing information given to him so it makes it difficult for him to find a job. She said claimant needs things broken down and he does best when he only needs to perform tasks one step at a time.

Claimant has gone to job interviews but he experiences difficulty in his communication because his answers to interview questions are very simplified.

Claimant's mother stated her son is "very sweet," but he needs constant stimulation. She is concerned because, someday, she will not be around, and claimant will need to be self-sufficient. She is very concerned for his overall well-being.

## 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 includes “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>2</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;

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<sup>2</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.

- (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.
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. Claimant had the burden to establish by a preponderance of the evidence that he is eligible for regional center services. Claimant's records, however, coupled with

Dr. Stacy's expert testimony, did not show that claimant has an intellectual disability that originated before the age of 18.

Claimant's most recent IEP, completed when he was 17 years old, contained no indication of intellectual disability, and determined that his communication, motor development, and social emotional development were not impaired. The psychoeducational summary completed when claimant was 16 years old showed his cognitive abilities were in the average range and his adaptive skills were age-appropriate. The June 2016 neuropsychological assessment diagnosed claimant with mild intellectual disability, but that assessment was performed when claimant was 22 years old and also contained diagnoses of Attention Deficit Hyperactivity Disorder, Persistent Depressive Disorder, Intermittent Depressive Episodes, and Anxiety, among other things. As Dr. Stacy explained, claimant's other diagnoses often interfere with the ability to take tests and submit to assessments, rendering the diagnosis of mild intellectual disability questionable. Further, even assuming claimant is now below average in his intellectual abilities or has a mild intellectual disability, the weight of the documentary evidence, which included summaries of claimant's intellectual functioning dating back to 2007 when claimant was 10 years old, showed claimant did not exhibit the characteristic features of intellectual disability, according to the DSM-5 criteria, prior to the age of 18.

Claimant's mother's love for her son is evident and her desire to find services for him sincere. She clearly wants the best for her son and is working hard to ensure he has every opportunity to succeed in his life. Her testimony regarding claimant's difficult birth and subsequent life challenges was credible. However, on this record, a preponderance of the evidence did not establish that claimant meets the diagnostic criteria for intellectual disability under the DSM-5. Accordingly, claimant is not eligible for regional center services.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that she is not eligible for regional center services is denied.

DATED: October 28, 2016

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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.**