

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Continuing Eligibility
of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016090599

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 2, 2016.

Claimant's mother represented claimant.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

The matter was submitted on November 2, 2016.

ISSUES

Is IRC's previous determination that claimant was eligible for regional center services under the Lanterman Act based on a diagnosis of epilepsy "clearly erroneous?"

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On June 26, 2016, IRC notified claimant that, effective August 26, 2016, she was no longer eligible for regional center services.
2. On September 13, 2016, claimant's mother filed a fair hearing request appealing that decision.

DR. TIEU'S TESTIMONY AND DOCUMENTS INTRODUCED AT THE HEARING

3. Claimant is 15 years old. IRC originally found her eligible for regional center services in 2011 when she was nine years old based upon a diagnosis of epilepsy. In a report dated January 4, 2011, Mary Lam, M.D., IRC medical consultant, found that she was eligible for regional center services due to a "seizure disorder-poor control." She recommended that claimant's eligibility be reviewed in three years.

4. As part of the recommended re-evaluation of her condition, on July 20, 2016, Linh Tieu, D.O., IRC medical consultant, performed a medical assessment of claimant and wrote a detailed report of her evaluation. In connection with her evaluation of claimant, she reviewed claimant's medical records and other information. Dr. Tieu found that claimant does not satisfy the criteria for regional center services under the epilepsy category. Dr. Tieu testified that she made her determination that the prior decision that claimant was eligible for regional center services is incorrect because her seizure disorder no longer continues to substantially impair her. Dr. Tieu's testimony was consistent with her report in this matter.

In reaching her conclusion Dr. Tieu reviewed progress notes from August 25, 2014, to April 7, 2016, from claimant's neurologist, Purnima Thakran, M.D., Ph.D.; a progress note from claimant's pediatrician, Rainilda Valencia, M.D., dated August 25, 2014; and progress notes from Machaela Marin-Tucker, P.A.-C from December 5, 2014

to September 14, 2014. These medical records recorded that claimant has had only “only 1 breakthrough seizure” since 2009. That seizure occurred in February 2016. Dr. Tieu also conducted a neurological evaluation of claimant and interviewed claimant’s mother. In addition, Dr. Tieu reviewed claimant’s Individual Program Plans dated July 8, 2015, and July 11, 2016.

Dr. Tieu testified that claimant has a diagnosis of “complex partial seizures, well controlled on single medication.” She had a seizure in 2010 based upon an abnormal EEG finding and since that time, she had only the one seizure in February 2016. After that episode, her medication was adjusted to twice daily. Claimant also has had behavioral issues at school, but no evidence was introduced that related these behavioral issues to her seizure disorder. The records Dr. Tieu reviewed showed that claimant’s seizure disorder is well controlled with the medication she takes daily, and the seizure disorder does not substantially interfere with her activities of daily living.

Dr. Tieu’s testimony was credible and consistent with the medical records and other evidence admitted at the hearing.

CLAIMANT’S JULY 11, 2016, IPP

5. According to her July 12, 2016, IPP claimant was attending a performance art school when she was expelled due to attitude and concerns about her behavior. Claimant is now in a public school and she does not have a 504 plan or an Individualized Education Plan. Claimant has a behavior plan at school because she is disrespectful to her teachers and she has been suspended several times. Claimant’s mother reported that claimant will become aggressive, about once a month, when she does not get her way and will hit and push others. She has emotional outbursts at least once a month. She insults her teacher, won’t follow directions, and talks back when she is upset about something. Her mother stated that some inappropriate behaviors have decreased over the last year.

CLAIMANT'S MOTHER'S TESTIMONY

6. Claimant's mother testified that she believes that claimant's behavioral problems are related to her seizure disorder but she did not provide medical evidence to support her belief. She said that claimant is doing better in school now and is "ok" with the medications she is taking twice a day.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not the previous determination that an individual has a developmental disability is erroneous, the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AND REGULATORY 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 that "[a]n 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 follows:

“Developmental disability” means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. Welfare and Institutions Code section 4643.5, subdivision (b), states:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

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

- (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.¹

(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.

¹ 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 this change.

7. 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

8. A preponderance of the evidence showed that IRC's prior determination that claimant is eligible for regional center services under a diagnosis of epilepsy is clearly erroneous pursuant to Welfare and Institutions Code section 4643.5, subdivision (b). Welfare and Institutions Code section 4643.5, subdivision (b), authorizes a regional center to reassess clients to determine if a determination previously made is currently correct. That is to say, the issue is not whether a diagnosis made in the past was correct, it is assumed to be correct; but rather, the issue is: given how the client currently presents, would that diagnosis be given today?

Although Dr. Lam determined in 2011 that claimant was eligible for regional center services based upon a diagnosis of epilepsy because of "seizure disorder-poor control," she recommended that claimant's eligibility be reviewed in three years. On July 20, 2016, Dr. Tieu performed a comprehensive reassessment of claimant as part of this review. She found that claimant's epilepsy is well controlled with a single medication and does not constitute a substantial disability, such that she continues to be eligible for regional center services. Dr. Tieu's opinion was credible and supported by the record. Although claimant has exhibited some behavioral issues, there is no evidence that her behavioral issues are related to her epilepsy, and claimant is able to perform her activities of daily living. Claimant did not offer sufficient evidence to dispute Dr. Tieu's opinion.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services and supports is denied. Claimant is ineligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: November 10, 2016.

ABRAHAM M. LEVY

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.