

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Continuing Eligibility
of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016100023

REVISED DECISION¹

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 9, 2016.

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

There was no appearance on behalf of claimant.

The matter was submitted on November 9, 2016.

¹ On November 30, 2016, IRC requested a clerical correction to page 8. Specifically, IRC requested that the word "autism" in the third paragraph be changed to intellectual disability. As the change did not alter the substance of the decision because it was merely a typographical error, the requested change was made.

ISSUE

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

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a seven year old female and has been receiving IRC services based on a diagnosis of mild intellectual disability since she was three years old.

Claimant also received Early Start services prior to the age of three.

2. Claimant's most recent Individualized Education Plan (IEP), dated June 9, 2015, showed she is served through special education under the categories of specific learning disability and speech or language impairment. The IEP does not indicate claimant is intellectually disabled.

3. A comprehensive assessment of claimant was completed by her school psychologist on June 4, 2016. The comprehensive assessment tested areas such as speech, language, adaptive skills, comprehension, academic achievement, social-emotional skills, psychomotor skills, auditory processing, visual processing, and cognitive functioning. The comprehensive assessment specifically stated claimant did not have an intellectual disability and noted that her overall intellectual abilities fell within the average range of functioning.

4. Based on the comprehensive assessment completed by claimant's school psychologist and her most recent IEP, IRC notified claimant on September 9, 2016, that she was no longer qualified for regional center services under the Lanterman Act.

5. On September 22, 2016, claimant's mother and authorized representative filed a fair hearing request requesting claimant be re-assessed by IRC so she would

continue to eligible for regional center services. The fair hearing request did not state any further information.

6. On October 11, 2016, IRC representatives and claimant's mother attended an informal meeting. IRC explained that, due to receipt of the above-referenced documents indicating claimant was not intellectually disabled, IRC had determined claimant no longer met the criteria for regional center services. IRC pointed out that, when claimant was originally determined to be eligible for regional center services, it was also recommended that her file be reviewed in two years to confirm the diagnosis. For unknown reasons, that review did not occur until recently, which resulted in IRC determining that claimant was no longer 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 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 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 AT HEARING

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 and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for 27 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 autism and intellectual disability, and in the assessment of individuals for regional center services under the Lanterman Act.

9. Dr. Stacy reviewed claimants 2015 IEP and psychological assessment. Dr. Stacy pointed out that claimant's IEP showed she was receiving special education services for specific learning disability and speech or language impairment, neither of which qualifies a person for regional center services.

10. Regarding the 2015 comprehensive assessment completed by claimant's school psychologist, Dr. Stacy testified that the assessment was very thorough and contained more testing than IRC would normally do if it re-assessed a consumer for continued eligibility of regional center services. Specifically, in addition to intelligence testing, the assessment also tested speech, language, and auditory deficits, which IRC would not normally test when the issue presented is whether a person has an intellectual disability. Because the assessment was so comprehensive, regional center staff were able to review the assessment and make the determination that claimant no longer met the criteria for intellectual disability under the DSM-5.

One of the tools used to assess claimant was the Kaufman Assessment Battery for Children, Second Edition (KABC). The KABC measures a person's abilities over 12 different subsets. Claimant's scores across the different subsets varied from scores of 3 to 8. Dr. Stacy explained that a score of three is very low, and a score of eight is average. Overall, however, claimant's scores on the KABC fell within the average range. Dr. Stacy explained that if a person is intellectually disabled, the scores would vary in the way claimant's scores varied on this test. Rather, the scores would be consistent across the different subsets. Consequently, claimant's scores were more indicative of a person with a learning disability or something other than an intellectual disability.

Claimant was also assessed using the Test of Nonverbal Intelligence, Fourth Edition (TONI-4). Dr. Stacy opined that the TONI-4 was most likely administered because of claimant's scattered scores on the KABC, which can be affected if a person has speech and language impairment. The TONI-4 uses nonverbal measures to assess a person's intelligence, so as to eliminate any skewed results that might occur in the KABC or other assessments that rely more on the use of language. Claimant scored a 90 on the TONI-4, which fell within the average range of intelligence.

The Woodcock-Johnson III Normative Update Tests of Achievement (WJ-3) assesses a person's academic abilities. The WJ-3 contains multiple subsets that test math skills, reading skills, oral expression, listening comprehension, and written expression, among other things. Dr. Stacy again pointed out that claimant's scores across the various subsets fell within the low to average range. Dr. Stacy stated again that, like with the KABC, a person with an intellectual disability should have scores on the WJ-3 that are consistent – not scores that vary as much as claimant's scores did. Dr. Stacy said that claimant's scores on the WJ-3 were also consistent with a learning disability or speech and language impairment and not an intellectual disability. Her conclusion was supported by the school psychologist, who stated the following in his conclusions:

[Claimant] does **not** meet eligibility for: Intellectual Disability Although [claimant's] adaptive scales and verbal ability levels are within the delay range, she is exhibiting nonverbal ability levels and processing skills within the average range. [Claimant's] academic skills also range from delay to average range. Therefore, at this time, she does not qualify under [intellectual disability]. (emphasis in original.)

11. Based on the comprehensive assessment completed by claimant's school district, and after reviewing claimant's IEP, Dr. Stacy concluded claimant no longer met the criteria for intellectual disability under the DSM-5 and is therefore ineligible for continued regional center services.

CLAIMANT'S MOTHER'S TESTIMONY

12. Claimant's mother said only that she disagreed with Dr. Stacy's conclusion and thought that the way her daughter actually functioned is different than what is contained in the IEP and psychological assessment.

LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. 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 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.

3. In a proceeding to determine whether a previous determination that an individual has a developmental disability "is clearly 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.) Thus, IRC has the burden to establish by a preponderance of the evidence that its previous eligibility determination "is clearly erroneous."

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 also 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. (*Ibid.*)

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

(a) 'Developmental Disability' means a disability that is attributable to mental retardation², 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;

² 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.

- (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. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to be eligible for regional center services. Welfare and Institutions Code section 4643.5, subdivision (b), authorizes the regional center to reassess consumers to determine if a diagnosis previously made is currently correct. Put another way, the issue is not whether the past diagnosis is correct; the issue is, in light of the reassessment, would that same diagnosis be given today? The statute does not

require that a regional center administer the comprehensive reassessment; it requires only that a comprehensive reassessment be completed. Neither the statute nor any regulation promulgated under the Lanterman Act defines what constitutes a "comprehensive reassessment" as used in Section 4643.5. Thus, whether the evidence IRC presents constitutes a "comprehensive reassessment" is a question of fact.

8. Claimant's school psychologist completed an assessment in 2015 that tested claimant across countless categories. According to Dr. Stacy, who is an expert in the testing and diagnosis of intellectual disability, the assessment completed by the school psychologist was more comprehensive than the assessments IRC would normally use to test for intellectual disability because the school psychologist also tested for speech, language, and auditory deficits. Because the assessment was so comprehensive, IRC's eligibility review team was able to render their conclusion after a review of the data contained in the assessment. Consequently, it is determined that the school psychologist's assessment met the requirements of Section 4643.5, and constituted the "comprehensive reassessment" contemplated in that provision.

According to Dr. Stacy, the 2015 psychological assessment placed claimant's intelligence level within the average range. Further, claimant's scattered scoring on the KABC and WJ-3 are indicative of a learning disability or speech and language impairment, and not an intellectual disability. Indeed, the assessment specifically indicated that claimant's cognitive impairments were not due to an intellectual disability. Dr. Stacy's testimony established that claimant no longer meets the criteria for an intellectual disability under the DSM-5.

Accordingly, the prior determination that claimant was eligible for regional center services under a diagnosis of intellectual disability is therefore clearly erroneous, in light of the 2015 comprehensive reassessment. As a result, claimant is no longer eligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services is denied.

DATED: November 30, 2016

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.