

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016110679

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 25, 2017.

Claimant's parents represented claimant, who was not present at the fair hearing.

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

The matter was submitted on January 25, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under a diagnosis of Autism Spectrum Disorder?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. September 27, 2016, IRC notified claimant that he was not eligible for regional center services.

2. On October 17, 2016, claimant's parents filed a fair hearing request appealing that decision and this hearing ensued.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services.

CLAIMANT'S BACKGROUND

4. Claimant was 17 years old at the time of his application. As summarized in the report of Ruth Stacy, Psy.D., who assessed claimant on behalf of IRC, claimant attends a charter school, is in the 12th Grade and is behind in the credits he needs to graduate. He has never been evaluated for special education services. Since the eighth grade claimant has been receiving mental health services and has seen a psychiatrist. The psychiatrist, according to claimant's mother, suspects that claimant has Autism, but he has not been diagnosed with Asperger's Disorder, Autism, or Autism Spectrum Disorder.

TESTIMONY OF RUTH STACY, PSY.D.

5. Ruth Stacy, Psy.D., is a licensed psychologist and since 2015 has been a staff psychologist at IRC. Claimant was referred to Dr. Stacy to obtain his current functioning levels and to assist in determining whether he is eligible for regional center services.

Towards this end, Dr. Stacy administered the following tests to claimant: Wechsler Adult Scale of Intelligence-Fourth Edition (WAIS-IV), to assess claimant's level of cognitive functioning; the Autism Diagnostic Observation Schedule –Second Edition (ADOS-2), Module 4, a standardized comprehensive assessment used to elicit social interactions and communication behaviors crucial for diagnosing Autism Spectrum Disorder; and the Adaptive Behavior Assessment System (ABAS), to assess claimant's developmental levels in various areas. She also conducted a diagnostic interview with claimant and reviewed pertinent records including a letter from claimant's doctor and a medical record that claimant's parents submitted. Dr. Stacy prepared a detailed report, dated September 27, 2016. She testified consistent with her report.

Based on the overall results of those assessments and other information she reviewed, Dr. Stacy concluded that claimant was not eligible for regional center services because he did not meet the criteria under the DSM-5 for Autism Spectrum Disorder. She found that claimant has Generalized Anxiety Disorder; Attention Deficit Hyperactivity Disorder; Chronic Motor Tic Disorder; and Childhood-Onset Fluency Disorder (Stuttering).

In reaching her conclusion that claimant does not qualify for regional center services under the Autism Spectrum Disorder category, Dr. Stacy cited the results from the ADOS-2, which were in the Non-Spectrum range. Claimant attained a Communication Total score of 1 and a Social Interaction Total score of 5 for a total score of 6.

His scores under the ABAS-3 showed that he did not have significant functional limitations. As Dr. Stacy explained, this showed that even if he met the criteria for a diagnosis of Autism Spectrum Disorder, he would not qualify for regional center services. His General Adaptive Composite score was 77, with a score below 70 indicating a substantial handicap. His conceptual score was 81; his Social Score was 85; and his Practical Score was 73. These scores were in the Low to Below Average Range.

The Wechsler assessment scores showed that claimant's intellectual functioning was in the average range. His processing speed was in the low average range, which Dr. Stacy said is typical for persons with Attention Deficit Hyperactivity Disorder.

In her report, Dr. Stacy detailed her observations of claimant, her interaction with him and his social and functioning skills. His behaviors, level of functioning and social interactions did not suggest that he has Autism Spectrum Disorder. Claimant did not have unusual sensory or sensory seeking behaviors; he did not have repetitive hand and finger mannerisms and he did not engage in self-injurious behavior. He did not exhibit an excessive interest in an unusual or highly specific or restricted topic/object and he did not exhibit any obvious activities or verbal routines that had to be completed in full or according to a sequence.

Dr. Stacy also reported that claimant responded appropriately to her comments about his thoughts, feelings or experiences. He reported specific non-routine events and gave a reasonable account. He discussed a vacation he took to San Diego and was able to have a conversation with Dr. Stacy. In the area of reciprocal social interaction, claimant exhibited appropriate eye contact although he looked down during the assessment and appeared anxious. He exhibited attempts to gain, direct or maintain Dr. Stacy's attention. He showed responsiveness to most social contexts, but Dr. Stacy noted his responses were somewhat awkward.

In addition, she noted that claimant speaks clearly and distinctly; he can find a specific area in a store or business; he tells time correctly and reads menus at restaurants; he gives clerks the correct amount of money; he can follow current events in the media; and he uses online or print resources to find information. Claimant shows respect for the privacy of others. He can make simple meals. Claimant further shows caution around hot or dangerous objects.

At the hearing, Dr. Stacy reviewed and addressed the records claimant's parents submitted in support of his application: An "encounter" record dated January 23, 2016, from Mountain View Behavioral Health, Inc., and a letter dated March 19, 2016, signed by Soe Moe Kyaw, M.D.

Dr. Kyaw stated that claimant has been under Dr. Kyaw's care since November 2, 2011, for Chronic Motor/Vocal Tic Disorder, Pervasive Development Disorder, Attention Deficit Hyperactivity Disorder, and Childhood Onset Fluency Disorder. The record from Mountain View stated under claimant's past psychiatric history that claimant has "[Pervasive Developmental Disorder] symptoms with [treatment] for depression/anxiety."

Dr. Stacy testified that these documents do not show that claimant qualifies for regional center services under the Autism Spectrum Disorder category and they did not change her opinion. Dr. Kyaw's letter does not state how the Pervasive Developmental Disorder diagnosis was reached. The record from Mountain View only recorded that claimant had past Pervasive Developmental Disorder symptoms.

6. Claimant's parents did not testify or present additional evidence. As thoughtful and dedicated advocates for claimant, they expressed their goal to get him help to overcome problems he is having at school.

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 states:

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 follows:

“Developmental disability” means a disability which originates before an individual attains age 18; 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

(a) “Developmental Disability” means a disability that is attributable to mental retardation,¹ 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 The regulation still uses the term “mental retardation;” the DSM-5 uses the term “intellectual disability.”

- (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.
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, who has the burden to establish his eligibility for regional center services, did not establish that he has an Autistic Spectrum Disorder under the DSM-5.

Dr. Stacy credibly concluded that claimant does not meet the criteria for Autism Spectrum Disorder under the DSM-5 based on her comprehensive assessment of claimant. In this regard, she administered several psychological assessments to claimant; conducted a diagnostic interview; made numerous observations of claimant's functioning skills, social interaction and behaviors; and reviewed relevant records. She prepared a detailed report that summarized her findings and testified consistent with her report. Claimant did not present evidence that contradicted her opinion.

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ORDER

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

DATED: February 2, 2017.

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.