

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017040157

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on May 16, 2017.

Stephanie Zermeño, Consumer Services Representative, represented the Inland Regional Center (IRC).

Claimant's husband appeared on behalf of claimant, who was present at the hearing.

The matter was submitted on May 16, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act, specifically under the basis of intellectual disability or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals, or autism spectrum disorder (ASD)?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 34-year old female. Claimant's husband applied to IRC to obtain services under the Lanterman Act alleging claimant had an intellectual disability or a condition closely related to an intellectual disability that required treatment similar to that required for individuals with an intellectual disability, or ASD. On March 7, 2017, IRC notified claimant of its determination that she was not eligible for regional center services because the information it reviewed did not establish that claimant 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.

2. On March 13, 2017, claimant's husband on behalf of claimant filed a Fair Hearing Request appealing IRC's determination. In the request, claimant asserted that "she was diagnosed with developmental delay when 'autism' was correctly a diagnosis (1989)" and "she has developmental issues now that would quantify (sic) as autism under category 5" and "to investigate her records and evaluate what she has in current evaluation of her mental status, not what was evaluated based on 80's criteria."

3. On April 4, 2017, IRC held an informal meeting with claimant's husband and claimant regarding the fair hearing request. During the informal meeting claimant's husband provided information regarding why he believes that claimant is eligible for regional center services, including her inability to control her emotions, that she is overstimulated easily, and her lack of social skills. On April 5, 2017, IRC wrote a letter informing claimant that IRC was adhering to its determination that claimant was not eligible for regional center services. This matter proceeded to hearing.

TESTIMONY OF MICHELLE LINDHOLM, PH.D.

4. Michelle M. Lindholm, Ph.D., is a licensed clinical psychologist. She was employed by IRC as a psychologist assistant in 2003; she became a clinical psychologist with IRC in 2011; she became a staff clinical psychologist and board certified behavioral analyst with IRC in 2014. Her duties as a staff psychologist and behavioral analyst both include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services. Dr. Lindholm reviewed claimant's records and, based solely on that review, formed an opinion as to whether claimant is eligible for IRC services. Dr. Lindholm did not perform any assessments or evaluations of claimant.

5. Dr. Lindholm testified that claimant is not eligible for IRC services on the basis of intellectual disability because she does not meet the requirement of an intellectual disability and because she did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).) Dr. Lindholm explained that in order to have a diagnosis of intellectual disability under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a person would need to have onset during the developmental period of before the age of 18 that includes both intellectual and adaptive functioning deficits meeting the following three criteria: (1) deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility (such adaptive functioning deficits limit functioning in one or more activities such as communication, social participation, and independent living); and (3) onset of intellectual and adaptive deficits during the developmental period.

6. Dr. Lindholm also testified that claimant was not eligible for IRC services on the basis of what is referred to as the fifth category, a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals, because she did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).) Dr. Lindholm explained that in order to meet eligibility requirements under the fifth category, claimant must function in a manner that is similar to that of a person with intellectual disability or require treatment similar to that required by individuals with intellectual disabilities.

7. Dr. Lindholm reviewed claimant's school records, and other records provided by claimant. Dr. Lindholm stated that claimant began receiving special education services from Moreno Unified School District when she was age 17 on the basis that she had a specific learning disability. The school records documented claimant's various achievements in the areas of reading, mathematics, writing, communication/participation, motor skills, social/emotional skills, and behavior. The school records noted that claimant's communication/participation skills were in the normal range based upon testing with the Vineland Adaptive Behavioral Scales. Additionally, the school records showed that claimant's written expressions skills were in the low average range; her reading skills were in the below average to average range; her communication skills were low average; her oral expression skills were average; her mathematics skills were borderline to mildly deficient; she had no noted deficiencies in her gross motor skills; she was noted as being somewhat shy but well behaved; and her daily living skills were noted to be in the normal range. Dr. Lindholm testified that these documented levels of performance for claimant in various areas of academics and life skills are not consistent with a diagnosis of intellectual disability and also do not qualify for services under the fifth category.

8. Dr. Lindholm also reviewed a psychoeducational evaluation report prepared by an interdisciplinary team of the Moreno Valley Unified School District after evaluation of claimant in March, April and May 2000 when claimant was 17 years old. The report shows that claimant's cognitive skills were measured with a Spanish language test of the Woodcock-Munoz Cognitive Abilities- Revised and were demonstrated to be in the average range, specifically with scores that range from low average to high average in cognitive ability. Additionally, the Leiter International Performance Scale – Revised test showed that claimant's cognitive abilities were in the average range, but claimant may have difficulties with confusion if too much visual information is presented to her at once. On the Wechsler Abbreviated Scale of Intelligence (WASI) test (an English language test), claimant had difficulty with visual organization, but that her scores indicated that she is mildly deficient to borderline intellectual ability. The report also stated that claimant's adaptive/social emotional functioning was evaluated using the Vineland Adaptive Behavior Scales Interview Edition, and the results showed that claimant was at the low end of the average range. Dr. Lindholm stated that the scores claimant achieved indicate that she has a stronger proficiency in Spanish than in English for these tests.

9. Dr. Lindholm testified that all of the records she reviewed regarding claimant indicate that she is functioning far above what you would expect for a person who would be eligible for services under a basis of intellectual disability or fifth category. Additionally, Dr. Lindholm testified that none of the records provided any indication that claimant had a diagnosis of ASD or exhibited any deficits in developmental areas that are typical with ASD. Dr. Lindholm stated that while the school records indicated that claimant was shy and quiet, this observation is simply a personality trait, particularly given that she had no behavioral or other problems indicative of ASD.

10. In conclusion, Dr. Lindholm stated that claimant is not intellectually disabled and does not have a condition that is closely related to intellectual disability or a condition requiring treatment similar to a person with intellectual disability. Dr. Lindholm further concluded that there is no evidence to indicate that claimant has autism spectrum disorder or symptoms of ASD and none of her records indicate any such diagnosis. Dr. Lindholm concluded that the evidence did not support a finding that claimant was eligible for regional center services.

TESTIMONY OF CLAIMANT'S HUSBAND

11. Claimant's husband testified regarding claimant's history and development. Claimant and her husband have been married for three years, but were dating since at least 2011. Claimant's husband has observed claimant's behaviors since they started dating and many times claimant "operates at the level of a 12 year old." He stated that claimant can't keep a job because she will "blow up" on people at times with emotional outbursts and anger. Claimant's husband stated that she is socially awkward and unable to understand social signals. As a result, he and claimant were required to change their church because claimant made inappropriate comments often and would just "just burst out" with whatever was on her mind. Additionally, he stated that claimant will frequently wander off and get lost.

12. Claimant's husband believes that claimant may have ASD, but that she has never been properly diagnosed with ASD. He claimed that much of the testing that claimant underwent as a child is not available to him because claimant's parents have the information in Mexico and are not willing to provide the documents to him.

13. Claimant's husband believes that claimant will benefit from services from IRC, particularly to improve her social interactions. He stated that he has attempted to obtain assistance for claimant from other agencies, but was repeatedly told that the agencies could not help him unless he could get claimant qualified for services from IRC.

Claimant's husband is trying to get claimant the help that she needs and is frustrated by the lack of results from his efforts to do so.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the

fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to [an intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [an intellectual disability] or to require treatment similar to that required for individuals with [an intellectual disability].

(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

[intellectual disability], 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 [intellectual disability].

6. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

EVALUATION

8. Claimant's husband believes claimant is eligible for regional center services because of an intellectual disability or what has been labeled fifth category, a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability, or based on a diagnosis of ASD. The Lanterman Act and applicable regulations specify the criteria an individual must meet in order to qualify for regional center services. Dr. Lindholm provided a thorough and detailed explanation of claimant's records, and explained why claimant did not qualify for regional center services. Dr. Lindholm concluded that claimant's cognitive skills and intellectual abilities are in the low average to average range, and she had no significant deficits in adaptive functioning. Additionally, Dr. Lindholm concluded that there is no evidence claimant has ASD or developmental deficits attributable to ASD. There was

insufficient evidence to conclude that claimant had a qualifying developmental disability.

9. Claimant's husband was sincere and his testimony heartfelt. He is clearly motivated by his desire to help his wife and obtain services that he believes are necessary to allow her to function in the world; he undoubtedly has his wife's best interest at heart. However, claimant has the burden of proving that she is eligible for regional center services. That is, she must prove it is more likely than not that she has a qualifying developmental disability. The weight of the evidence presented at hearing did not establish that claimant is substantially disabled because of ASD, an intellectual disability, or a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability. As such, claimant failed to satisfy her burden of demonstrating eligibility for regional center services under the Lanterman Act.

ORDER

Claimant's appeal from IRC's determination that she is not eligible for regional center services and supports is denied.

DATED: May 26, 2017

DEBRA D. NYE-PERKINS
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.