

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017050243

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on June 22, 2017.

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

Claimant's mother represented claimant, who was not present.

The matter was submitted on June 22, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Intellectual Disability, or the Fifth Category based on a medical diagnosis of Prader-Willi Syndrome (PWS) and other mental health diagnoses?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 21-year-old female who lives with her parents. Claimant was a regional center consumer beginning in 2002, under the category of Intellectual Disability. At the time, claimant was approximately six years old. The initial assessment finding claimant eligible for services recommended claimant be re-assessed in two years. In 2005, claimant's mother requested claimant's file be inactivated. Claimant was not a regional center consumer between 2005 and 2011.

2. In 2011, claimant's mother asked IRC to reactivate claimant's file under the category of Intellectual Disability. At that time, IRC conducted an assessment to determine if claimant was still eligible under that category. IRC concluded she was not. Specifically, IRC concluded claimant did not meet the criteria for intellectual disability as specified in the Diagnostic and Statistical Manual for Psychological Disorders, Fourth Edition. Claimant's mother disagreed with IRC's conclusion and filed a fair hearing request. Before the hearing, claimant's mother withdrew the fair hearing request. The withdrawal of the fair hearing request rendered IRC's decision to discontinue services for claimant effective as of that date, and claimant's case was closed.

3. In March 2017, claimant's mother requested claimant be found eligible for regional center services based on her diagnosis of PWS. On April 13, 2017, IRC sent claimant Notice of Proposed Action notifying claimant that she was not eligible for regional center services because the records claimant provided to IRC did not establish that she 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 April 26, 2017, claimant's mother filed a fair hearing request contesting IRC's decision. She stated:

[Claimant has PWS], a lifelong genetic disorder which includes intellectual disability. [Claimant] was assessed by Regional Center 9/14/12 with a full-scale IQ of 64. [Claimant] must be supervised at all times. [Claimant] is unable to care for her personal needs unassisted. . . .

5. On May 17, 2017, claimant and Ms. Zermeño discussed the fair hearing request telephonically. IRC adhered to its determination that claimant was not eligible for regional center services. Ms. Zermeño sent a letter memorializing their telephonic discussion, stating:

[A]t this time, IRC is standing by its decision that [claimant] is not eligible for regional center services. I reviewed [claimant's] record with the Eligibility Team and they maintain the decision that [claimant] is not eligible. Testing over the years has shown that she is inconsistent in the scores she achieves over different measures of intellectual functioning but she does not achieve flat scores across the gamut of scores like a person with an Intellectual Disability would. Her academic scores as measured [her school] range from low average to high average. This does not support a claim of Intellectual Disability or 5th Category. A person who obtains standard scores over 100 on various areas of functioning cannot be categorized as someone like a person with an Intellectual Disability. According to information

provided on the Vineland II Parent Survey Form, [claimant's] adaptive skills are also not commensurate with a person with an Intellectual Disability or in the 5th Category. The Eligibility Team does not feel that any difficulties [claimant] is experiencing are a result of a developmental disability but rather, a result of various mental health processes such as auditory hallucinations and delusions relating to her diagnosis of Schizoaffective Disorder.

6. Although the fair hearing request specified that claimant's mother wished to proceed only on eligibility for Intellectual Disability, IRC noted that because the Fifth Category was raised during the telephonic meeting, it should be considered. Claimant's mother stated she intended the Fifth Category to be part of her fair hearing request. Thus, the issue at hearing was whether claimant qualified for services based on either Intellectual Disability or the Fifth Category.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY AND THE "FIFTH CATEGORY"

7. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: Deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

8. Under the Fifth Category the Lanterman Act provides assistance to individuals with disabling condition closely related to an intellectual disability that requires similar treatment needs as an individual with an intellectual disability, but does

not include other handicapping conditions that are “solely physical in nature.” A disability involving the Fifth Category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

EVIDENCE PRESENTED BY IRC

9. Holly Miller, Psy.D., is a staff psychologist for IRC. She testified that she reviewed claimant’s records and concluded claimant is not eligible for regional center services under either Intellectual Disability or the Fifth Category. The following is a summary of her testimony concerning claimant’s records.

IRC does not dispute claimant’s diagnosis of PWS. PWS is a genetic disorder that causes a feeling of constant hunger. There are a variety of symptoms associated with PWS including cognitive difficulties, behavioral problems, skin picking, and difficulty controlling emotions. There is no definitive relationship, however, between PWS and intellectual disability.

Claimant receives special education services under the category “other health impairment” as a result of her PWS diagnosis as well as a diagnosis of Emotional Disturbance (ED). Claimant has also been diagnosed with Attention Deficit Disorder (ADD) and Schizoaffective Disorder (SD). According to a psychological assessment completed by IRC in 2012, claimant hears voices, maintains a belief that she communicates with an imaginary friend, experiences hallucinations, has delusions, picks her skin, and smears feces. None of claimant’s school records show claimant has ever suffered from a substantial cognitive deficit as a result of any of her diagnoses.

Dr. Miller explained that, in the original psychological assessment that deemed claimant eligible for regional center services under a diagnosis of intellectual disability, there was wide variability between subsets in the cognitive tests. People who have wide variability between tests typically are not intellectually disabled; a person who is truly

intellectually disabled has consistently low scores in all areas. The assessing psychologist found claimant eligible because of the low scores, but because of claimant's young age, recommended re-assessment in two years. Dr. Miller stated this type of recommendation is usually made with younger children because patterns of cognitive deficiency are usually not established at young ages; this allows a psychologist to reassess the child several years later to determine whether the child is truly intellectually disabled.

A psychological assessment completed by claimant's school district in 2009 also showed higher verbal abilities than non-verbal abilities as well as low average or solidly average scores within the various subsets of tests pertaining to cognitive functioning. Thus, just as claimant showed no substantial cognitive deficit in 2012, she also did not show a substantial cognitive deficit in 2009.

A psychological assessment completed by IRC in 2012 included multiple measures to determine cognitive abilities. Claimant's test results did not show she had substantial cognitive deficits across a variety of subsets consistent with a diagnosis of intellectual disability. Although her IQ score was low, her scores on the individual portions contributing to the overall IQ score varied. A variance of this manner renders the full-scale IQ score invalid, or at least, questionable. Thus, the low IQ score is not indicative of an intellectual disability.

Dr. Miller concluded claimant does not have an intellectual disability and does not qualify for services under the Fifth Category because claimant varies in her cognitive skills. She has strengths and weaknesses in different areas (i.e. verbal vs. non-verbal), and her most recent assessment shows she functions in an age-appropriate manner academically. Claimant's varied abilities are likely explained by her PWS, ADD, SD, and ED diagnoses.

EVIDENCE PRESENTED BY CLAIMANT'S MOTHER

10. Claimant's mother testified that her daughter just "wants to have friends and live a normal life." She tried to let claimant go to community college but claimant did not do well. She permitted claimant to ride the bus but claimant got lost on several occasions. Claimant is easily disoriented and forgetful. Claimant's mother prepares all of claimant's meals because of her PWS and claimant is never left alone. Claimant's mother explained that it has been very challenging and she is frustrated because claimant has needs and those needs are not being met. Claimant's mother said she is requesting assistance from IRC because claimant will need assistance as she gets older learning to live, behave properly, socialize, and deal with her depression and emotional disturbance.

11. Emily Dame is the Director of Education and Training at the California Prader-Willi Foundation and testified at the hearing. Ms. Dame said PWS is characterized by low muscle tone, lack of satiety, and morbid obesity if not controlled. She said that some people with PWS do have a degree of intellectual disability that affects functions like planning, problem solving, and functioning in everyday life. She said people with PWS cannot live independently because when left alone, they usually die from obesity or other food-related complications like choking. They typically cannot be let out into the community without supervision because they can access food. When reviewing claimant's psychological assessments and school records, Ms. Dame acknowledged the scattered scores in the various subsets pertaining to claimant's cognitive abilities, and said the scatter is very common in people with PWS.

12. Claimant's mother provided voluminous exhibits concerning PWS and claimant's history. All of the documents were reviewed and considered.

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,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) 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 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.

- (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 she is eligible for regional center services. Claimant did not meet that burden.

Claimant has various mental health diagnoses that are the likely cause for her scattered performance in cognitive testing. Those diagnoses include ADD, SD, and ED. Claimant's mother also indicated claimant suffers from depression. None of these conditions qualify claimant for regional center services. Similarly, although claimant's PWS is a serious life-altering medical condition, a diagnosis of PWS does not qualify a person for regional center services.

As Dr. Miller explained, the various assessments that contained scattered scores show claimant has a wide range of cognitive functioning and differences between her verbal and nonverbal abilities. A person with an intellectual disability, or who suffers from a condition similar to an intellectual disability that requires treatment similar to a person with an intellectual disability, would not have scattered scores of that nature. Also as Dr. Miller explained, although claimant had a low IQ score in 2012 when IRC assessed her, the IQ score's validity is called into question because of the various scattered scores underlying the full-scale score. At any rate, a person who meets the criteria under the DSM-5 for intellectual disability or Fifth Category must have substantial cognitive deficits; none of the records provided from either IRC or claimant's mother showed claimant suffers from a substantial cognitive deficit.

ORDER

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

DATED: July 3, 2017

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.