

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017050257

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on July 19, 2017.

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

Claimant's mother appeared on behalf of claimant, who was present.

The matter was submitted on July 19, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of Autism Spectrum Disorder (autism), intellectual disability, or a disabling condition closely related to an intellectual disability (Fifth Category)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On April 5, 2017, IRC notified claimant, a 29-year-old woman, that she was not eligible for regional center services because the records she provided to, and the assessment conducted by, 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.

2. On May 1, 2017, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination. This hearing ensued.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY AND THE "FIFTH CATEGORY"

3. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (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.

4. 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.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

5. The DSM-5 also identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria includes 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 under the eligibility criterion of autism.

EVIDENCE PRESENTED BY IRC

6. 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, Senior Consumer Services Coordinator, and Psychological Assistant. 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, intellectual disability, the fifth category, and in the assessment of individuals for regional center services.

7. Dr. Stacy reviewed the following documents provided by claimant: Four Individualized Education Plans (IEPs) from claimant's school completed in 1995, 1998, 2001, and 2004; medical records; and a psychoeducational assessment dated January 27, 1999.

Dr. Stacy explained that autism and intellectual disability typically manifest themselves during the developmental period. During the past 30 years of claimant's life, there has been no indication that she exhibited the characteristic features of autism as listed in the DSM-5 or experienced consistent cognitive deficits as would be typical with a person who suffered from an intellectual disability. To the contrary, claimant was served in special education under the category of "speech and language impairment" during her educational years. Further, the most recent standardized testing provided when claimant was 16 years old showed that she scored in the 70s and 80s on standardized tests in every academic area. A person with an intellectual disability would not have such high scores. Finally, during most of claimant's academic life, the records show claimant got along well with others, was aware of her surroundings, and was able to express her choices and preferences. She participated in group activities, attended church, attended a teen center, and participated in age-appropriate social activities.

Claimant's medical records showed that she suffered from anorexia in 2007 when she was 15 years old and was hospitalized until she recovered. As Dr. Stacy explained, this is not typically a disorder that would afflict a person with autism because a person with anorexia suffers from a poor body image; a person with autism is not typically socially aware enough to engage in the behavior that would lead to anorexia.

Claimant's medical records also show that as early as 2007, claimant has been diagnosed with major depression, anxiety, insomnia due to mental disorder, Mood Disorder and attention deficit hyperactivity disorder (ADHD). Her depression and anxiety increased following the death of her father when she was in her early 20s. Claimant has a history of taking Paxil, Prozac, Zoloft, Risperdal, and other medications to treat her mental health conditions.

Although claimant's records showed diagnoses of autism and intellectual disability in 2013, they did not show any evidence of standardized testing or

psychological testing to show how her medical doctors reached those diagnoses. There is nothing in claimant's medical records that show 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; or symptoms that caused clinically significant impairment in social, occupational, or other important areas of function.

Claimant's IEPs from 1995, 1998, 2001, and 2004 did not show persistent and consistent deficits in intellectual functioning. Rather, they show deficits in the areas of speech and language-based skills, which are the categories that qualified her for special education services. A 1999 psychological assessment attributed claimant's academic challenges to a learning disability.

Dr. Stacy concluded that claimant's records showed a person who suffers from mental health problems, rather than someone who met the diagnostic criteria for autism, intellectual disability, or the Fifth Category. As such, claimant's records did not establish eligibility for regional center services under the Lanterman Act.

8. Dr. Stacy assessed claimant on February 22, 2017. Her assessment included a record review, diagnostic interview, and observations. Due to claimant exhibiting a blank stare and/or catatonic disposition during most of the testing, Dr. Stacy could not administer standardized tests like the Childhood Autism Rating Scale or the Autism Diagnostic Observation Schedule.

Dr. Stacy testified that nothing in claimant's academic history showed she was never even considered for special education services because of autism or intellectual disability. It was always due to speech and language impairment. She also noted that claimant never had restricted or repetitive interests, she held a job her last year in high school, and her records showed she was well-liked by her peers. Claimant's main troubles appeared mostly in her teen years when she suffered from anorexia and were

exacerbated around age 22 when her father died. In other words, claimant's history was very "up and down" as far as performance, social interaction, and overall ability to function normally.

During the hearing, claimant remained still. Sometimes she worked on a puzzle book, other times, she stared down. When spoken to, she did not respond and did not make eye contact, although towards the end of the hearing claimant perked up when prompted by conversation about a happy memory. Dr. Stacy said these personality traits/characteristics are not typical of autism; rather they are more typical of a person suffering from mental health problems.

Paul Greenwald, a staff psychologist at IRC, testified. He met with claimant and Dr. Stacy after Dr. Stacy consulted with him about her observations and attempt to assess claimant. Dr. Greenwald testified that in the course of the conversation he and Dr. Stacy had with claimant, she revealed that she had severely disturbed sleep and thoughts about her deceased father. He also observed claimant appeared to have very severe expressions of melancholy and depression to a point where she has difficulty even moving. She had a very sad expression, downcast eyes, and exhibited a very painful emotional state usually associated with a severe loss. Dr. Greenwald testified that claimant presented like someone suffering from major depression.

CLAIMANT'S MOTHER'S TESTIMONY

9. Claimant's mother said claimant has deficits in social communication and has difficulty making friends. Claimant does not speak in complete sentences and only uses small phrases when she wants something. Claimant's mother reads claimant's diary and notices that the sentences are not complete. Claimant gets annoyed when required to switch from one activity to another. Claimant loves to cut pictures out of magazines and does not like when people move the pictures around.

Claimant's mother testified that claimant suffered from anorexia in high school. She was treated for depression and ADHD during that time period as well. When claimant was in her 20s, her father passed away and the ADHD and depression worsened. According to claimant's mother, claimant's treating doctor noticed a change in claimant's typical facial expression following her father's death. Claimant's doctor "discovered" claimant had autism following the passing of claimant's father and determined that the other diagnoses (i.e. ADHD, mood disorder, depression, etc.) must have "masked" the autism.

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 "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 retardation¹, 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) 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

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.

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 qualify for regional center services. The burden was on claimant to establish his eligibility for regional center services. Claimant did not meet her burden.

Claimant's IEPs, medical records, and the psychological assessments conducted by claimant's school and Dr. Stacy, do not show symptoms consistent with the DSM-5 criteria for autism or intellectual disability. Rather, claimant's records showed she has been diagnosed with Mood Disorder, ADHD, depression, anxiety, and insomnia due to mental disorder and has consistently been on psychiatric medications since her teenage years. Further, claimant's developmental history showed difficulties with speech and language, but did not show overall cognitive deficits consistently from her developmental period into adulthood. Claimant's ability to function also worsened with the death of her father, suggesting her problems are related to mental health concerns as opposed to autism or an intellectual disability. Dr. Stacy and Dr. Greenwald's testimony regarding claimant's ineligibility for regional center services was credible and persuasive. Although claimant's mother provided medical records that showed claimant was diagnosed with autism and a mild intellectual disability in 2013, none of the medical records show any testing was conducted to support those diagnoses.

Claimant's mother's testimony was heartfelt and sincere. She truly appears to want the best for her daughter. However, the evidence did not establish that claimant

meets the diagnostic criteria for autism, an intellectual disorder, or a disabling a condition closely related to an intellectual disability.

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ORDER

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

DATED: July 28, 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.