

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017061031

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on July 31, 2017.

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 July 31, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of an intellectual disability?

FACTUAL FINDINGS

BACKGROUND

1. On May 18, 2017, IRC notified claimant, a 13-year-old male, that he was not eligible for regional center services because the records claimant provided to IRC did not establish that he 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 June 13, 2017, claimant's mother filed a fair hearing request on claimant's behalf contending claimant is eligible for IRC services based on an intellectual disability.

3. OAH sent a Notice of Hearing, in English and Spanish, to the address claimant's mother provided on the fair hearing request. IRC also sent a letter to claimant's mother, dated July 24, 2017, reminding her of the date and time of the hearing and providing exhibits IRC intended to introduce at the hearing. Additionally, IRC staff attempted to contact claimant's mother by telephone in the days leading up to the hearing since they had not received any discovery. IRC was unable to contact claimant's mother, because the voice mailbox on the phone number she provided was full.

4. Notice of the hearing was proper.

5. Claimant's mother did not appear. Claimant's mother did not contact IRC or OAH to provide a reason for non-appearance or to request a continuance. Accordingly, claimant is in default. IRC elected to proceed with the hearing.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

6. 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 THE HEARING

7. Sandra Brooks, Ph.D., has been a staff psychologist at IRC for 10 years. Her duties include conducting psychological assessments and rendering decisions regarding a person's eligibility for IRC services under the Lanterman Act. Dr. Brooks provided her curriculum vitae, which shows extensive experience, awards, professional affiliations, internships, and professional activities in the field of psychology. Dr. Brooks qualifies as an expert in the assessment of persons suspected of having an intellectual disability.

8. Dr. Brooks testified at the hearing. She reviewed the following records provided by claimant: claimant's February 15, 2017, Individualized Education Plan (IEP); a

March 8, 2016, psychoeducational report; a February 15, 2017, language, speech, and hearing assessment; and claimant's medical records.

According to Dr. Brooks, claimant's records do not show any evidence of an intellectual disability.

Claimant's IEP shows that he receives special education services under the categories of speech and language impairment and other health impairment. According to the IEP, claimant's speech impairment and health issues affect his performance in the classroom. There is nothing in the IEP to indicate claimant suffers from an intellectual disability.

According to claimant's March 2016 psychoeducational report, claimant's scores show he functions in the low average range. Moreover, his adaptive functioning is noted as being commensurate with his chronological age. The report also shows claimant has a diagnosis of Dandy Walker Syndrome (DWS). DWS, according to a printout provided by IRC, is a condition stemming from the abnormal development of the cerebellum, the portion of the brain that controls voluntary muscle movement, balance, and posture. While some persons with DWS may experience intellectual disabilities due to poor development, a diagnosis of DWS does not necessarily mean that the afflicted has an intellectual disability. Dr. Brooks noted that DWS is not a condition that qualifies a person for regional center services.

A progress note in claimant's medical records dated June 23, 2015, states that claimant has "multiple medical conditions including intellectual disability . . ." However, the progress note does not state the basis for the diagnosis (i.e. whether testing was conducted or if the diagnosis was received from some other document) or provide any data to support that conclusion. Dr. Brooks reviewed all the medical records provided and did not see any indication of testing completed to indicate claimant has an intellectual disability.

Accordingly, based on the records, Dr. Brooks concluded claimant is not eligible for regional center services.

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 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.

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.

- (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 had the burden to establish by a preponderance of the evidence that he is eligible for regional center services. Claimant's records, however, coupled with Dr. Brooks's expert testimony, did not show that claimant has an intellectual disability. Accordingly, claimant is not eligible for regional center services.

//

//

ORDER

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

DATED: August 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.