

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017070460

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on August 24, 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 August 24, 2017.

ISSUE

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

FACTUAL FINDINGS

BACKGROUND

1. On June 8, 2017, IRC notified claimant, a 28-year-old female, 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.

2. On July 7, 2017, claimant's mother filed a fair hearing request on claimant's behalf contending claimant is eligible for IRC services based on a developmental disability.¹ On July 13, 2017, OAH sent a Notice of Hearing to the address claimant's mother provided on the fair hearing request.

3. Claimant's mother attended an informal meeting with IRC on August 3, 2017. On August 8, 2017, IRC sent claimant's mother a letter memorializing the meeting. The letter informed claimant that it was adhering to its decision that claimant was not eligible for regional center services, stating in part:

I explained the eligibility criteria for regional center services. Per the records that were provided to IRC, [claimant] was served under Specific Learning Disability. Specific Learning Disability does not qualify for regional center services. The other issue is that there is a mental health diagnosis. Mental health diagnosis also does not qualify for regional center services.

4. IRC also sent a letter to claimant's mother, dated August 16, 2017, reminding her of the date and time of the hearing and providing exhibits IRC intended to introduce at the hearing. Additionally, OAH staff attempted to contact claimant's

¹ Claimant's mother did not specify under which category she believed claimant was eligible for regional center services. As a result, all five categories were considered in reaching this decision.

mother by telephone on the morning of the hearing to inquire whether she would be comfortable proceeding without an American Sign Language interpreter, who IRC had requested, but was unavailable to attend the hearing. Claimant's mother did not return the voicemail, and an attempt to reach her by telephone from the hearing room was unsuccessful.

5. Notice of the hearing was proper.

6. Neither claimant nor her mother appeared at the hearing. 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 AND THE "FIFTH CATEGORY"

7. 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.

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 AT THE HEARING

9. On July 9, 2012, when claimant was 23 years old, Rebecca R. Holtzman, Psy.D., conducted a psychological assessment for the South Central Los Angeles Regional Center (SCLARC) in order to assist with eligibility determination. The assessment was conducted for the purpose of determining the presence or absence of developmental delays attributable to intellectual disability or autism. Dr. Holtzman reviewed the results of previous testing, and noted that at age three, claimant was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) and Developmental Expressive Language Disorder. A psycho-social assessment conducted in 2012 indicated that claimant received special education services under the primary designations of Specific Learning Disability (SLD) and bilateral hearing loss. Claimant’s mother reported that claimant had also been diagnosed with Mood Disorder, Borderline Intellectual Functioning, and ADHD.

Dr. Holtzman administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) to obtain information about claimant’s cognitive potential. Claimant received an overall Verbal Comprehension IQ Composite Score of 58, and Perceptual Reasoning IQ Composite Score of 60. The report did not indicate the significance of these scores.

To further assess cognitive potential, Dr. Holtzman administered the Test of Nonverbal Intelligence – Third Edition (TONI-3). On the TONI-3, claimant received a

Quotient of 66, which was within the extremely low range of non-verbal functioning. The Wide Range Achievement Test – Fourth Edition (WRAT-4) was administered to assess cognitive ability based on academic achievement. In the area of reading, claimant received a Standard Score of 68 with a grade equivalent of third grade. Comparing the results of these tests, Dr. Holtzman estimated that claimant possessed cognitive abilities within the extremely low range.

Dr. Holtzman administered the Vineland Adaptive Behavior Scales - II to assess communication abilities. Claimant received a score of 64 for the communication portion, which is in the low (mild) range. She received a Receptive Language Age Equivalent of 2 years, 11 months, and an Expressive Language Age Equivalent of 7 years, 7 months. In the area of Daily Living Skills, claimant received a Standard Score of 66, which is within the low (mild) range. In the area of Socialization, she received a score of 64, also in the low (mild) range.

In conclusion, Dr. Holtzman determined that claimant performed in the extremely low range in overall cognitive intellectual abilities and overall low (mild) range for adaptive functioning. Despite scoring in the extremely low range, no records indicated a diagnosis of intellectual disability prior to the age of 18, and thus a diagnosis of intellectual disability for the purpose of receiving regional center services under the Lanterman Act could not be established.

10. After reviewing Dr. Holtzman's report and other medical records, the SCLARC determined that claimant did not have a substantial disability as a result of 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 and was therefore ineligible for regional center services.

11. The only additional records that were received subsequent to SCLARC's determination were some medical records that indicated claimant had a diagnosis of

Mood Disorder. Mood Disorder is a psychiatric condition that does not qualify a person for regional center services under the Lanterman Act.

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 retardation², 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 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.

(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 had the burden to establish by a preponderance of the evidence that she is eligible for regional center services. Claimant's records, however, did not show that claimant has 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. Although, the psychological assessment conducted in 2012 indicated claimant scored poorly in the areas of cognitive ability and adaptive functioning, there was no evidence presented establishing that these deficits originated prior to claimant turning

18 years old. Claimant's school records did not indicate a diagnosis of intellectual disability, rather they reflected claimant had a learning disability. There was no evidence suggesting claimant had ever been diagnosed with autism, cerebral palsy, or epilepsy. Accordingly, claimant has failed to establish that she is eligible for regional center services.

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ORDER

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

DATED: August 30, 2017

ADAM L. BERG

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 90 days.