

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017070944

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on September 7, 2017.

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

There was no appearance on behalf of claimant or claimant's authorized representative.

The matter was submitted on September 7, 2017.

ISSUE

Is claimant eligible for regional center services under the category of Intellectual Disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On July 13, 2017, IRC notified claimant, an 18-year-old female, that she was not eligible for regional center services because the records she 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 as an individual with an intellectual disability.

2. On July 19, 2017, claimant, through her authorized representative, filed a fair hearing request appealing IRC's determination. On August 9, 2017, IRC representatives and claimant's authorized representative attended an informal meeting to discuss claimant's fair hearing request and IRC's eligibility determination. Following the informal meeting, IRC adhered to its original determination that claimant was not eligible for regional center services.

3. On July 25, 2017, OAH served the Notice of Hearing on claimant at the address provided on claimant's Fair Hearing Request.

4. On August 28, 2017, IRC sent a letter to claimant containing discovery and a list of witnesses IRC intended to call at the hearing. IRC sent the letter to the same address listed on claimant's Fair Hearing Request.

5. On September 7, 2017, neither claimant nor claimant's authorized representative appeared at the hearing, and claimant was determined to be in default. IRC elected to proceed with the hearing in lieu of an order of dismissal.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

6. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (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 socio-culturally matched peers.

EVIDENCE PRESENTED AT HEARING

7. Holly Miller, Psy.D., has been a staff psychologist at IRC since 2016. Prior to that, she held several positions at different entities, including clinical psychologist, clinical supervisor, and mental health clinician. Dr. Miller has substantial internship experience from 2005 to 2009, at both public and private facilities. She has attended numerous trainings and conferences in the field of psychology and is published in a peer-reviewed journal. Dr. Miller qualifies as an expert in the field of psychology.

8. Dr. Miller testified at the hearing. The following is a summary of her testimony and the records provided by claimant.

Dr. Miller reviewed a letter from claimant's high school dated February 27, 2017; a special education assessment dated September 21, 2015; a special education assessment dated September 27, 2012; a neuro-psychological assessment report dated

August 12, 2015; a neuro-psychological assessment dated August 6, 2015; and a neuro-psychological evaluation dated June 19, 2008.

Shortly after claimant's birth, claimant was placed in a room with her mother. Her mother fell asleep. At some point, claimant went into cardiac arrest and died. A nurse entered the room and discovered that claimant was not breathing. Although claimant was resuscitated, it was unknown for how long claimant went without oxygen to her brain. Following the incident, claimant remained in a coma for six weeks. Also as a result of the anoxia, claimant has suffered over time from a host of cardiac problems.

Claimant's mother suffers from mental illness (bipolar disorder and schizophrenia). Claimant lives with her maternal grandmother, mother, older brother, and great grandfather. Because of claimant's mother's difficulties, claimant's maternal grandmother is very involved in claimant's care.

Claimant is served in special education under the category of specific learning disability. Claimant's records do not contain any diagnosis of an intellectual disability. A letter from claimant's school district dated February 27, 2017, noted that claimant's anoxia at birth caused damage to claimant's left and frontal lobe, resulting in impairment for things controlled by those parts of the brain. Specifically, claimant has difficulty in activities that require processing and understanding complex directions, sequencing numbers, and problem solving.

According to Dr. Miller, claimant has undergone significant and extensive psychological testing and the results are inconsistent with a diagnosis of intellectual disability under the DSM-5. Specifically, although claimant shows deficits in some areas, her delays and general difficulties are not consistent globally. Rather, she struggles in some areas but shows average skills in other areas. In fact, the 2015 psychological assessment completed by claimant's school district specifically ruled out an intellectual disability, noting that her delays were "induced at birth."

In claimant's 2012 psychological assessment, she was diagnosed with neurocognitive disorder as opposed to intellectual disability. Dr. Miller explained that a diagnosis of neurocognitive disorder is consistent with the trauma suffered shortly after claimant's birth. Unlike neurocognitive problems that cause difficulties in the areas affected by the brain injury, intellectual disability is a developmental disability that causes global delays.

The neuropsychological assessment completed in 2015 also supports the conclusion that claimant does not meet the diagnostic criteria for intellectual disability. Dr. Miller pointed out that this assessment showed a lot of variability in her intellectual functioning as well as improvement in some areas where claimant formerly performed at a lower level. Variability in intellectual functioning and improvement is not characteristics of a person who is intellectually disabled. The neuropsychological assessment reflected a diagnosis of Major Neurocognitive Disorder Due to Vascular Disease and not intellectual disability.

Dr. Miller therefore concluded, based on the records, that claimant did not qualify 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. 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.

3. 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. (*Ibid.*)

4. 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

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.

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."

5. 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.

CONCLUSION

6. The burden was on claimant to establish eligibility for regional center services. Claimant did not appear and none of the documents introduced in this hearing established that claimant has a diagnosis of intellectual disability or meets the diagnostic criteria for intellectual disability under the DSM-5. Dr. Miller's expert testimony that claimant did not qualify for regional center services was also credible and unrebutted.

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: September 13, 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.