

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017081134

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 8, 2017.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Andrea Liwanag, Social Worker, County of San Bernardino Department of Children and Family Services, represented claimant, who is a dependent of the county. Claimant did not appear.

The matter was submitted on November 8, 2017.

ISSUE

Is IRC's original determination finding claimant eligible for regional center services under a diagnosis of mild intellectual disability clearly erroneous in light of IRC's recent comprehensive reassessment?

FACTUAL FINDINGS

1. 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 socio-culturally matched peers.

2. Claimant is a 13-year-old boy receiving regional center services as a result of a 2011 intellectual disability diagnosis by Edward Frey, Ph.D. In Dr. Frey's evaluation, Dr. Frey assessed claimant's cognitive and adaptive skills. Cognitively, claimant tested in the mild intellectual disability range. Adaptively, claimant tested within the borderline range. Dr. Frey also diagnosed claimant with phonological disorder and expressive language disorder. He also recommended reevaluating claimant in two years because although claimant showed cognitive limitations, his adaptive skills suggested there may be "higher potential."

3. IRC staff psychologist Sandra Brooks, Ph.D., conducted a comprehensive reassessment of claimant on March 20, 2017. She concluded claimant no longer met the diagnostic criteria for intellectual disability.

4. On July 27, 2017, IRC notified claimant that he was no longer eligible for regional center services under a diagnosis of intellectual disability because its original determination finding claimant eligible for regional center services is clearly erroneous in light of the comprehensive reassessment. Claimant appealed that determination and this hearing ensued.

5. Dr. Brooks testified on behalf of IRC. Prior to conducting her assessment, Dr. Brooks reviewed claimant's school records, which included special education individualized education plans and psychological assessments. She also reviewed Dr. Frey's prior report and other pertinent information provided by claimant. The following is a summary of her assessment and the documents provided.

Claimant's school records show he has received special education services under the categories of specific learning disability, language impairment, and emotional disturbance. None of these diagnoses qualify claimant for regional center services.

A February 2017 psychoeducational assessment completed by claimant's school district found claimant qualified for educational services under diagnoses of emotional disturbance and specific learning disorder. The psychological testing showed claimant had a pattern of splintered scores that is not typical of a person who has an intellectual disability. For example, claimant's nonverbal skills were in the low average range. However, claimant's perceptual reasoning was in the average range. Further, the report documented claimant's pattern of behaviors which included using foul language and sexual language, as well as challenging authority figures and being involved in fights. Although these extreme behavioral problems can manifest in persons with an intellectual disability, they are more typical of persons with emotional disturbance or

attention deficit hyperactivity disorder (ADHD). Claimant is currently on medication for ADHD and has been diagnosed with ADHD in the past.

Dr. Brooks administered the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5) and the Vineland Adaptive Behavioral Scales – Second Edition (Vineland). Dr. Brooks's findings regarding claimant's cognitive functioning was consistent with previous findings in that claimant's scores were splintered. Claimant was found to have verbal skills in the moderately deficient range; visual spatial skills in the low average range; fluid reasoning in the low average range; working memory in the borderline range; and processing standard score in the low average range. His full scale IQ was 66. Although the IQ is lower, as Dr. Brooks mentioned, it is not representative of claimant's overall skills because of the splintered scores. The Vineland, wherein claimant was rated by his caregiver, showed very low adaptive skills.

Dr. Brooks noted that during the exam, there was one portion where claimant was answering quickly and correctly on every single question. She learned that during the exam, claimant was looking at the test answers which were in front of her on the desk; once Dr. Brooks figured out what claimant was doing, claimant laughed – she said he thought it was "hilarious." Claimant's behavior during the testing showed claimant has a more advanced cognitive ability than someone who has an intellectual disability.

No records provided showed claimant has a consistent cognitive and adaptive limitations indicative of an intellectual disability. Further, no records provided showed claimant was substantially disabled in three or more areas of major life activity.

6. Ms. Liwanag is a social worker with the San Bernardino County Department of Children and Family Services, and she testified at the hearing. Her testimony is summarized as follows: She is assigned to claimant, who is a dependent of the County. Claimant's parents' rights were terminated due to methamphetamine use, and he was raised by his aunt. However, in the past year, his aunt passed away. Claimant now

resides in a group home. Claimant has a hard time speaking and communicating. Claimant does experience a lot of racial and sexual outbursts, and she feels he was the victim of a lot of bullying. She believes he is emotionally disturbed due to his family history. Claimant receives various kinds of individual and group therapy and counseling at the group home. Claimant takes medications for ADHD and night terrors. Ms. Liwanag said she filed the appeal on claimant's behalf because she sees the low IQ in his psychological assessment and disagrees with IRC's conclusion that claimant is not eligible for regional center services.

LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

3. In a proceeding to determine whether a previous determination that an individual has a developmental disability "is clearly erroneous," the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish by a preponderance of the evidence that its previous eligibility determination "is clearly erroneous."

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 also 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.*)

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. Although claimant was initially diagnosed with an intellectual disability, as he progressed in age, his cognitive and adaptive skills did not show consistent deficits that would normally be expected in a person with an intellectual disability. It appears that claimant's ADHD, speech and language impairment, emotional disturbance, and specific learning disability provide a better explanation for the cognitive and adaptive challenges exhibited by claimant. None of those disorders qualify a person for regional center services under the Lanterman Act. Thus, the original determination by IRC finding claimant eligible for regional center services under a diagnosis of intellectual disability, is clearly erroneous, in light of Dr. Brooks's comprehensive reassessment and other documentary evidence presented at hearing.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services is denied.

DATED: November 14, 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.