

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017081282

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on September 27, 2017.

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

Claimant's legal guardian (cousin) and authorized representative appeared on behalf of claimant, who was present.

The matter was submitted on September 27, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as the result of a diagnosis of Autism Spectrum Disorder or Intellectual Disability?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant turns three years old on November 14, 2017. Claimant's most recent Individualized Family Service Plan (IFSP), dated July 11, 2016, indicated that his Early Start Services would terminate on his third birthday.

2. On July 26, 2017, IRC sent notified claimant that he did not qualify for regional center services under the Lanterman Act because the records provided did not show 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 as an individual with an intellectual disability.

3. On August 16, 2017, claimant's authorized representative filed a fair hearing request on claimant's behalf contending that claimant would still need IRC services after his third birthday. She requested claimant be evaluated by a "neutral third party."

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER (AUTISM)

4. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5) identifies criteria for the diagnosis of autism. The diagnostic criteria includes persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped 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 autism.

## DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

5. The 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

6. Veronica Ramirez, Ph.D., holds a doctorate in clinical psychology and is a staff psychologist for IRC. Dr. Ramirez testified at the hearing. The following is a summary of Dr. Ramirez's testimony and the documents provided to IRC.

Other than claimant's IFSP, the only document provided to IRC was a document entitled, "Developmental Evaluation – Assessment Report," dated June 21, 2017. The assessment evaluated claimant in the following areas: cognitive, communication (expressive and receptive), social-emotional, physical development, and adaptive behavior. Dr. Ramirez reviewed the standard scores claimant received and noted that he

tested as typical for his age in all areas. Although the assessment showed claimant's language abilities tested in the low average range, they still were not within the range normally considered to be indicative of intellectual disability.

Dr. Ramirez said there were no indications in the assessment that claimant has been diagnosed with intellectual disability or autism.

Dr. Ramirez therefore concluded, based on the records provided, that claimant did not qualify for regional center services under the Lanterman Act.

7. Claimant's legal guardian testified at the hearing. She is a caring, nurturing person who is clearly devoted to doing whatever is necessary to help claimant develop to the best of his abilities. She explained that claimant was born to a mother who had been using methamphetamine during the pregnancy. When claimant was born, there were no signs that he had suffered any ill-effects from the methamphetamine. She does not know much about how he was raised from birth until he came into her life when he was 16 months old. She has raised him since that time.

Claimant's legal guardian said that claimant has always functioned at a level less than what would be expected for his age. When he came to her at 16 months of age, he was functioning like a 6-month old. She said he is very shy and has difficulty interacting with other children. Although he will speak to her, he typically will not speak to other people. She said he has been referred to mental health specialists for behavioral concerns, and it has also been suggested by his doctors that claimant receive occupational therapy. Through the Early Start Program, claimant has received two sessions per week at 120 minutes per session of skills practice.

Claimant's legal guardian disagrees with many of the entries on the assessment, noting he cannot count, he does not know his colors, and does not volunteer for tasks, among other things. Claimant's legal guardian would like claimant to be re-assessed

because she believes he needs continued services in order to help him progress normally.

Claimant legal guardian testified that he has never been diagnosed with autism or intellectual disability.

## 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, 500.)

### 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 retardation<sup>1</sup>, 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:

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<sup>1</sup> 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.

- (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 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. Dr. Ramirez's expert testimony that claimant did not qualify for regional center services was credible and unrebutted. Although claimant appears to have some difficulties in the area of speech and language, none of the information contained in the assessment was consistent with a diagnosis of autism or intellectual disability under the DSM-5. On this record, a preponderance of the evidence did not establish that claimant qualifies for regional center services or that a new assessment is warranted.

## ORDER

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

DATED: October 2, 2017

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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.**