

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017081320

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 11, 2017.

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

There was no appearance by or on behalf of claimant.

The matter was submitted on October 11, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of intellectual disability?

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. On August 7, 2017, IRC notified claimant 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 August 18, 2017, claimant filed a fair hearing request through his authorized representative contesting IRC's decision.

3. On September 20, 2017, IRC representatives and claimant's representative attended an informal meeting to discuss claimant's eligibility.

4. Following the informal meeting, IRC adhered to its original determination that claimant was not eligible for regional center services. IRC explained in a letter memorializing the informal meeting that claimant had other diagnoses (Attention Deficit Hyperactivity Disorder (ADHD) and anxiety) that likely contributed to his cognitive and adaptive deficits. IRC also explained that the psychological assessment conducted by IRC Staff Psychologist Michelle Lindholm, Ph.D., and a review of claimant's records, showed "a splintered pattern of intellectual skills ranging from borderline to low average." Further, claimant's adaptive skills showed "mildly delayed to average," which does not meet the "substantially disabling" criteria to become eligible for regional center services.

5. On August 31, 2017, OAH served a Notice of Hearing on claimant at the address listed on the Fair Hearing Request.

6. On October 4, 2017, IRC sent a list of its witnesses and a copy of the hearing exhibits it intended to introduce at hearing to the address listed on claimant's Fair Hearing Request.

7. On October 11, 2017, claimant did not appear at the hearing. Given that service of the Notice of Hearing was proper and there was no legally sufficient reason for claimant's non-appearance, IRC elected to proceed with a hearing and obtain a decision on the merits.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

8. 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 HEARING

9. Dr. Lindholm testified at the hearing. Dr. Lindholm holds a Doctorate in Psychology and is a Board Certified Behavior Analyst. She also holds a Master of Arts and Bachelor of Arts in Psychology. Dr. Lindholm has been a staff psychologist at IRC since 2011, and served as a psychological assistant at IRC for eight years prior to becoming a staff psychologist. Dr. Lindholm has extensive clinical experience in the assessment and diagnosis of individuals suspected of having a developmental disability that would qualify them for regional center services. Dr. Lindholm has attended countless educational conferences and trainings in her field and has achieved honors in

the same. Dr. Lindholm qualifies as an expert in the diagnosis and treatment of persons with an intellectual disability.

10. Dr. Lindholm reviewed the records provided by claimant. She noted that claimant, who is 13 years old, receives special education services based on the category of intellectual disability. She explained that the criteria for special education in that category is different than a diagnosis of intellectual disability under the DSM-5, and that a diagnosis of intellectual disability also does not mean someone qualifies for regional center services as they must also be substantially disabled.

11. Dr. Lindholm stated that claimant's school records showed claimant's intellectual functioning varied from mildly deficient to high average intelligence, and his adaptive skills varied from mildly deficient to low average, which is far above the level of adaptive functioning required to show a substantially disabling condition that renders someone eligible for regional center services.

12. Dr. Lindholm conducted a psychological assessment of claimant on August 7, 2017. She administered the Kaufman Brief Intelligence Test – Second Edition (KBIT) and the Adaptive Behavior Assessment System – Third Edition (ABAS).

On the KBIT, claimant's verbal scores were in the borderline range. His nonverbal scores were in the low average to average range. His IQ composite was in the borderline to low average range. Dr. Lindholm explained that this scattered pattern of scores is not consistent with intellectual disability.

On the ABAS, which tested claimant's adaptive skills across several areas (general, conceptual, social, and practical), claimant's scores showed mild deficiencies in all areas except social skills, which were in the low average range.

Claimant has previous diagnoses of ADHD, Anxiety Disorder, and a learning disorder. He is medicated for the ADHD and his anxiety. She explained that his medications, anxiety, and ADHD might interfere with his cognitive abilities and adaptive

skills, which would explain the scattered scores not typically seen in a person with an intellectual disability.

Accordingly, Dr. Lindholm concluded claimant was 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) "'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 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.

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 that he is eligible for regional center services. Claimant introduced no evidence that proved he was eligible to receive regional center services. Based on the records provided to IRC, Dr. Lindholm's psychological assessment, and her testimony, claimant does not meet the diagnostic criteria for intellectual disability under the DSM-5 and is therefore ineligible for regional center services under the Lanterman Act.

ORDER

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

DATED: October 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.