

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018010930

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on February 27, 2018.

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

Claimant's mother and claimant appeared on behalf of claimant.

The matter was submitted on February 27, 2018.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of Autism Spectrum Disorder (autism), intellectual disability, or a disabling condition closely related to an intellectual disability (Fifth Category)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 4, 2018, IRC notified claimant, a 26 year-old-man, that he was not eligible for regional center services because the records he 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 January 8, 2018, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination; this hearing ensued.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

3. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: Deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY AND THE FIFTH CATEGORY"

4. 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.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

5. The DSM-5 also identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria includes persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive 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 the eligibility criterion of autism.

EVIDENCE PRESENTED AT THE HEARING

6. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor, Senior Consumer Services Coordinator, and Psychological Assistant. She has been involved in assessing individuals who desire to obtain IRC services for over 27 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism, intellectual disability, the fifth category, and in the assessment of individuals for regional center services.

7. Dr. Stacy reviewed the following documents provided by claimant: IRC Social Assessment dated July 12, 2001; IRC Medical Evaluation dated July 31, 2001; Psychological Evaluation completed by Thomas Gross, Ph.D., dated July 31, 2001;

Multidisciplinary Psychoeducational Report dated February 11, 2009; various school records from 2011 and 2018; and IRC's eligibility determination dated January 3, 2018.

Dr. Stacy's testimony and the records are summarized as follows:

Claimant has been diagnosed in the past with Attention Deficit Hyperactivity Disorder (ADHD), Pervasive Development Disorder (PDD), Asperger's syndrome, Mood Disorder, and Tourette syndrome. These disorders, according to Dr. Stacy, would explain a lot of what is going on with claimant.

Claimant received special education services initially under the category of Emotional Disturbance, which does not qualify him for regional center services. That category later changed to autism, however, there was no supporting documentation showing how that diagnosis was made. Moreover, that diagnosis for special education purposes would have been made pursuant to different criteria than that used to diagnose a person with autism under the DSM-5. Further, a person cannot have Pervasive Development Disorder and autism at the same time; thus, at least one of those diagnoses was incorrect.

Claimant's school records do not show an early speech delay. None of the records provided show a history of restricted or repetitive behaviors, which is a marked feature of autism. His school records did show some behavioral concerns, however, those behavioral concerns could also be attributable to the PDD, ADHD, Mood Disorder, and other challenges faced by claimant.

On July 31, 2001, IRC evaluated claimant for regional center services. Dr. Gross found claimant ineligible. Dr. Stacy noted that claimant's score on the Childhood Autism Rating Scale was 21; well below the diagnostic threshold for an autism diagnosis. The Leiter Intelligence Performance Scale, a cognitive assessment, showed claimant scored in the average range. Dr. Gross found claimant ineligible for regional center services. Dr. Gross also administered the Vineland Adaptive Behavior Scales, which showed some

deficiency. However, as Dr. Stacy pointed out, the assessment did not show claimant was substantially handicapped in three or more major life activities.

The multidisciplinary psychoeducational report completed in January 2009 by claimant's school psychologist, showed claimant is quite intelligent. His nonverbal activity fell far above average, so he does not have a cognitive delay. In California Standard Testing, claimant was basic, proficient, or advanced in all areas except spelling. Claimant's social skills were somewhat of a challenge for him. Dr. Stacy did not see anything in this report that showed claimant suffered from autism, intellectual disability, or a condition closely related to an intellectual disability that required similar treatment.

In claimant's 2011 Individualized Education Plan (IEP), the school had autism listed as his primary disability. However, there is nothing attached to the IEP or any discussion as to how or why the school found claimant eligible under the category of autism. Moreover, Dr. Stacy explained that an autism finding for purposes of special education services is made under Title 5 of the California Code of Regulations, which merely requires "autistic-like" behaviors. The Lanterman Act requires use of the DSM-5, which is much more extensive than what would be required to find a person eligible for special education services.

In sum, none of the records showed claimant meets the criteria for a diagnosis of autism, intellectual disability, or the Fifth Category. Even if claimant did have one of these diagnoses, Dr. Stacy pointed out that claimant does not have a substantially handicapping condition as required by Title 17 of the California Code of Regulations.

8. Claimant's mother testified at the hearing. Claimant's mother said claimant's behavioral challenges began when he was under two years old, and would get kicked out of daycare. Claimant's first diagnosis of Mood Disorder occurred at age five or six. At that point, claimant was put on mood stabilizers which caused a rapid weight gain. Some of the other medications claimant has taken or is taking include

medications for depression, sleep, and staying awake. Sometimes, claimant is suicidal. He has seen a psychiatrist most of his life, however, last November he switched to a psychiatrist that focuses on adults. Getting appointments has been difficult, but claimant has an appointment scheduled next month.

Claimant has suicidal ideations and is depressed. Claimant's mother said that in 2008, she was called at work because claimant had threatened to hang himself with a rope. However, claimant was never hospitalized following this incident.

Claimant's mother clearly loves her son and wants the best for him. She said he tried to obtain eligibility with the Department of Rehabilitation but they said he was "too severe" for services. Claimant did have a few opportunities for jobs but they did not work out.

9. Claimant testified briefly. He said he has one interest; video games. Claimant said he has difficulty functioning without his medication, but functioning while on the medication is also difficult because it makes him feel like a zombie. He said without it he feels horrible and like "doing absolutely nothing." He would prefer to sleep the entire day. Claimant was a very pleasant young man. During claimant's testimony, the following observations were made: claimant was very attentive, inquisitive, asked appropriate questions, provided appropriate responses, sat quietly, and did not exhibit any repetitive or restrictive motions or fixations. Claimant did not appear to have any issues with comprehension or conducting himself appropriately during the hearing.

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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, §15.)

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 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.

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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;

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.

(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. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. The burden was on claimant to establish his eligibility for regional center services. However, the records introduced by claimant do not show that he has a DSM-5 diagnosis of autism, intellectual disability, or a condition closely related to an intellectual disability. Dr. Stacy's testimony also established that claimant's records did not contain any information showing claimant has autism, an intellectual disability, or a condition closely related to an intellectual disability. Although claimant certainly has some challenges that may mimic one of these conditions (i.e. PDD, ADHD, Mood Disorder, etc.), claimant's challenges appear to be more related to mental health conditions than autism, an intellectual disability, or a condition closely related to an intellectual disability. Moreover, even if the records showed claimant did have one of these qualifying conditions, the evidence did not show claimant has significant functional limitations in three or more of the following areas of a major life activity.

ORDER

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

DATED: March 8, 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.