

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018011036

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on April 4, 2018.

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

Claimant's mother appeared on behalf of claimant.

The matter was submitted on April 4, 2018.

ISSUE

Does claimant have Autism Spectrum Disorder (autism) and if so, is his condition substantially disabling, such that he is eligible for regional center services?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On December 20, 2017, IRC notified claimant's mother that claimant, a four-year-old boy, was not eligible for regional center services because the records he provided to IRC, and an assessment conducted by 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 3, 2018, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination; this hearing ensued.

DIAGNOSTIC CRITERIA FOR AUTISM

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) contains the diagnostic criteria used to diagnose autism. The DSM-5 also identifies criteria for the diagnosis of autism. 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

4. Claimant receives special education services based on a diagnosis of autism and speech and language impairment. IRC did not dispute that claimant meets the diagnostic criteria for autism. However, IRC based its denial of services on the fact that, despite claimant's diagnosis, his autism is mild, and he is not substantially disabled.

5. 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 and in the assessment of individuals for regional center services.

6. Dr. Stacy reviewed the documents provided by claimant, which included claimant's Individualized Education Plans (IEPs) and various psychological assessments conducted by claimant's school. Dr. Stacy also reviewed a psychological assessment completed by IRC Staff Psychologist Michelle Lindholm, Ph.D., on December 18, 2017. Dr. Stacy's testimony and the records are summarized as follows:

Claimant has undergone extensive testing in multiple psychological assessments, all of which were reviewed. Most of claimant's testing showed that he functions, adaptively and in many cases cognitively, within the average or low average range. She does not dispute that some of his communication abilities may be delayed, but usually a person who is substantially handicapped for purposes of regional center services must function in the extremely low range in order to be eligible for services.

Dr. Lindholm's December 2017 assessment showed she reviewed claimant's records, observed claimant, interviewed claimant, interviewed claimant's mother,

conducted the Adaptive Behavior Assessment System, Third Edition (ABAS 3), and administered the Childhood Autism Rating Scale, Second Edition (CARS 2). As with the other assessments contained in claimant's records, claimant's overall score on the ABAS 3 fell within the average range. Claimant's scores on the CARS 2 showed claimant was at the lower end of the mild to moderate range for symptoms of autism. Nothing in the records or assessment showed that claimant functioned at an extremely low range, adaptively or cognitively, in three or more areas of major life activity as required by Title 17 of the California Code of Regulations. Dr. Lindholm concluded that claimant met the diagnostic criteria for autism under the DSM-5, with accompanying speech and language impairment, communication disorder by history, and Attention Deficit Hyperactivity Disorder (ADHD) by history. Dr. Stacy agreed with the conclusions reached by Dr. Lindholm in her assessment.

Based on the foregoing, Dr. Stacy concluded that, although claimant meets the diagnostic criteria for autism, his condition is very mild and not substantially disabling. Therefore, he does not qualify for regional center services. The documentary evidence supported Dr. Stacy's conclusion.

7. Claimant's mother testified very passionately and credibly regarding her concern to maintain services for her son so that he may continue to grow intellectually and adaptively. Claimant currently receives services from the Center for Autism and Related Disorders. Claimant receives applied behavioral analysis services 30 hours per week. Claimant is in preschool four days per week. Claimant receives speech services in school 30 minutes once a week and speech services outside of school once per week. Claimant's mother enrolled claimant in a play group every Wednesday night for two hours. Claimant's mother has noticed that her son has made great strides with all the interventions available to him. She appreciates that IRC conducted an assessment but felt Dr. Lindholm did not spend enough time truly assessing claimant's needs.

8. Claimant's mother submitted a letter from claimant's neurologist, J. Thomas Megerian, M.D., Ph.D. Claimant's mother spent quite a bit of time compiling information and ensuring claimant's neurologist received all the information and documents he needed in order to render the opinion stated in the letter. The letter, generally, indicates that claimant continues to require extensive services in the areas of expressive language, socialization, adaptive and self-help, where he is "significantly behind" his peers. The letter also speaks of claimant's challenges with fine motor skills and safety awareness. The letter noted that when claimant is not receiving services he regresses. Therefore, the letter concluded, that claimant will continue to need interventions in order to achieve age-appropriate milestones.

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 "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;

(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

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.

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 is on claimant to establish his eligibility for regional center services. However, the records introduced by claimant, Dr. Stacy's testimony, Dr. Lindholm's assessment, and the letter provided by claimant's neurologist, do not show that claimant is substantially disabled under Title 17 criteria, despite his diagnosis of autism. While claimant certainly may have some challenges in the areas of speech and language, his school records and the assessment conducted by Dr. Lindholm show that, overall, he functions within the average or low average range. In other words, claimant does not have significant functional limitations in three or more of the following areas of a major life activity. Therefore, despite the diagnosis of autism, claimant does not meet the full eligibility criteria to qualify for services.

ORDER

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

DATED: April 6, 2018

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.