

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018030185

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 3, 2018.

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 April 3, 2018.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of an intellectual disability?

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. On February 1, 2018, IRC notified claimant, a 17-year-old girl, that she was not eligible for regional center services because the records claimant provided to IRC did not establish that she 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 February 19, 2018, claimant filed a Fair Hearing Request, appealing IRC's determination and requesting a hearing.

3. On March 7, 2018, IRC representatives and claimant's authorized representative attended an informal meeting. Following the informal meeting, IRC adhered to its original determination. In the letter memorializing the informal meeting, IRC wrote:

During [Claimant's] psychoeducational report from the Jurupa Unified School District dated January 23, 2009, The Universal Nonverbal Intellectual Test (UNIT) was conducted. Her Full Scale IQ score was 85, which is in the low average range. This does not yield cognitive levels in the Intellectual Disability (ID) range. [Claimant] received special education services through the school due to a diagnosis of Specific Learning Disability (SLD). In the Individualized Education Program (IEP) from West End Unified School District dated December 6, 2017, [Claimant] continued to receive special education services through the school with a primary

diagnosis of Specific Learning Disability. Additional records reviewed also indicate diagnoses of Depression, Attention Deficit Hyperactivity Disorder (ADHD), and Post-Traumatic Stress Disorder (PTSD). These are not qualifying diagnoses for regional center services.

4. IRC filed a Request to Set an administrative hearing with OAH. The Request to Set incorrectly identified claimant's address as 1781 Dansar Court instead of 7781 Dansar Court. OAH sent the Notice of Hearing on March 6, 2018, to the address identified on the Request to Set. Despite the erroneous address, IRC's representative stated that she had spoken with claimant's authorized representative since that time and he indicated he received the Notice of Hearing. Additionally, on March 27, 2018, IRC sent claimant a letter which contained the evidence for the hearing, a witness list, and notice of the hearing date, time, and location. That letter was sent via certified mail, which was received on March 29, 2018, at claimant's correct address. Thus, it is concluded that claimant had notice of the hearing and is in default.¹

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

5. 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

¹ It is noted that subsequent to the hearing, claimant's father called OAH and acknowledged receipt of the Notice of Hearing but missed it because he "mixed up" the hearing date. He was provided an opportunity to submit an explanation in writing asking for the record to be re-opened, but failed to do so in a timely manner. Thus, the record remained closed and the decision was submitted.

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 BY IRC

6. Sandra Brooks, a staff psychologist at IRC, testified at the hearing. Dr. Brooks is an expert in the evaluation and diagnosis of persons suspected of having an intellectual disability. Dr. Brooks, along with the IRC eligibility team, reviewed claimant's records, which included several psychoeducational assessments and psychological assessments provided by claimant.

Dr. Brooks concluded that the evidence established claimant is not eligible for regional center services because the records provided did not show claimant meets the diagnostic criteria for intellectual disability under the DSM-5 and even if she did, the records did not show claimant has a substantial disability in three or more major life activities as a result. Dr. Brooks explained that claimant's IQ is in the low-average range, and she does not exhibit significant deficits consistently across both adaptive and cognitive levels. Claimant also suffers from depression, ADHD, and Post Traumatic Stress

Disorder that arose from suspected sexual abuse when claimant was younger. Claimant is also on medications for depression and ADHD. Thus, claimant's learning difficulties appear to be attributable to a learning disorder and not a developmental disability.

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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, § 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.

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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 retardation², cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to

² 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.

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 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 she is eligible for regional center services. Claimant did not establish by a preponderance of the evidence that she has an intellectual disability or is substantially disabled because of an intellectual disability. Accordingly, claimant is not eligible for services under the Lanterman Act.

ORDER

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

DATED: April 9, 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.