

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018050691

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on July 11, 2018.

Leigh-Ann Pierce, Program Manager, represented the Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, who was present at the hearing.

The matter was submitted on July 11, 2018.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act, specifically, under the category of intellectual disability or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 20-year old female. Claimant's mother applied to IRC to obtain services under the Lanterman Act alleging claimant had an intellectual disability or a condition closely related to an intellectual disability that required treatment similar to that required for individuals with an intellectual disability. On March 23, 2018, IRC notified claimant of its determination that she was not eligible for regional center services because the information it reviewed did not establish that claimant 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 April 23, 2018, claimant's mother on behalf of claimant filed a Fair Hearing Request appealing IRC's determination. In the request, claimant asserted that "[she] has a low I.Q. level, which is only one issue. She also has substantial executive function skill deficits compounded by dysgenesis of the corpus callosum which greatly affects her independent living skills." Claimant further wrote that "[she] would benefit greatly by access to the independent living skills training offered by Taft College . . . [but she] must be an IRC client to be accepted to this program."

3. On May 3, 2018, IRC held an informal meeting with claimant's mother and claimant regarding the fair hearing request. During the informal meeting claimant's mother provided information regarding why she believes that claimant is eligible for regional center services. On May 10, 2018, IRC wrote a letter informing claimant that IRC was adhering to its determination that claimant was not eligible for regional center services. This matter proceeded to hearing.

TESTIMONY OF RUTH STACY, PSY.D.

4. Ruth Stacy, Psy.D., is a licensed clinical psychologist and has worked for the past three years as a staff psychologist at IRC. Her duties as a staff psychologist include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services. Prior to working as a staff psychologist at IRC, Dr. Stacy worked as a senior counselor at IRC and has been employed by IRC for the past 28 years. Dr. Stacy reviewed claimant's records, including an assessment of claimant conducted by Dr. Brooks, another staff psychologist at IRC, and worked with a team of evaluators at IRC to form an opinion as to whether claimant is eligible for IRC services.

5. Dr. Stacy testified that claimant is not eligible for IRC services on the basis of intellectual disability because she does not meet the requirement of an intellectual disability and did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).) Dr. Stacy explained that in order to have a diagnosis of intellectual disability under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a person would need to have onset during the developmental period, before the age of 18, that includes both intellectual and adaptive functioning deficits meeting the following three criteria: (1) deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility (such adaptive functioning deficits limit functioning in one or more activities such as communication, social participation, and independent living); and (3) onset of intellectual and adaptive deficits during the developmental period.

6. Dr. Stacy also testified that claimant was not eligible for IRC services on the basis of what is referred to as the fifth category, a disabling condition closely related

to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals, because she did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001, subd. (a).) Dr. Stacy explained that in order to meet eligibility requirements under the fifth category, claimant must function in a manner that is similar to that of a person with intellectual disability or require treatment similar to that required by individuals with intellectual disabilities.

7. Dr. Stacy reviewed claimant's records, including a neuropsychological evaluation conducted on March 22, 2016, at Loma Linda University, and the psychological assessment conducted on May 22, 2018, by Dr. Brooks, at IRC. Dr. Stacy stated that because claimant had always been home-schooled, she did not have any records related to any school assessments for special education services. Dr. Stacy stated that the psychological assessment conducted at IRC on May 22, 2018, included additional adaptive testing beyond that which was provided in the March 22, 2016, assessment for a determination of whether claimant would qualify for services under the fifth category. Dr. Stacy testified that these documented levels of performance for claimant in both assessments in various areas of functioning are not consistent with a diagnosis of intellectual disability and also do not qualify for services under the fifth category.

8. Dr. Stacy testified that Dr. Brooks from IRC conducted a psychological assessment of respondent on May 22, 2018, when respondent was 20 years old. Dr. Brooks summarized her evaluation of claimant in a report, which Dr. Stacy reviewed while working with Dr. Brooks on the team from IRC responsible for making eligibility determinations. Dr. Stacy stated that Dr. Brooks administered to claimant a "Street Survival Skills Questionnaire (SSSQ), which consists of questions in nine areas of abilities related to life skills with multiple choice answers. Claimant received an overall score of

94, which corresponds to an adaptive level of average. Claimant's scores in each of the nine areas were "average," except for two areas of measurements and public services, where she scored "low average." Additionally, Dr. Brooks had claimant's mother complete the Vineland Adaptive Behavior Scales – third edition, which obtains information from claimant's mother regarding claimant's development in several areas of adaptive functioning. The results of that questionnaire indicated that claimant had an adaptive behavioral composite score of 70, which indicates that her overall adaptive skills are in the low/mildly deficient range. Dr. Stacy testified that the IRC team discussed these results and that the results indicated that claimant has the knowledge and the ability to develop her adaptive skills and should be given the opportunity to develop those adaptive living skills. Dr. Stacy testified and Dr. Brook's report stated:

"it is not clear . . . the extent to which [claimant's] difficulties/deficits are related to her limited experiences (having been homeschooled for her entire life) or are secondary to processing deficits associated with her medical condition (dysplasia of the corpus collosum)."

9. Dr. Stacy also testified about her review of the 2016 evaluation of claimant performed at Loma Linda University when claimant was 18 years of age. She stated the report shows that multiple tests were performed, including the Wechsler Adult Intelligence Scale – fourth edition (WAIS-IV), the Wisconsin Card Sorting Test (WCST), and Delis Kaplan Executive Functioning System (DKEFS). Dr. Stacy explained the WAIS-IV provides information in the four categories of verbal comprehension, perceptual reasoning, working memory and processing speed index, with a full scale intellectual quotient (IQ) score as well. Dr. Stacy stated that claimant had verbal comprehension scores in the average range, perceptual reasoning in the borderline range, working

memory in the borderline range, and processing speed in the borderline range. Claimant's overall full scale IQ score was 80, which is considered low average. Claimant's scores on the WCST test showed results of very superior, superior and average; whereas her test scores on the DKEFS showed varied results ranging from impaired, low average, to borderline. Dr. Stacy explained that having such a wide range of test results is frequently seen in individuals with brain dysfunction or a traumatic brain injury, which is consistent with claimant's diagnosis of mild neurocognitive disorder due to multiple etiologies. However, after reviewing all the test results, Dr. Stacy stated that the results clearly indicated that claimant did not suffer from intellectual disability or a pattern of intellectual disability, but rather claimant has overall cognitive skills in the low average to average range. Dr. Stacy testified that all of the records she reviewed regarding claimant indicate that she is functioning far above what you would expect for a person who would be eligible for services under the category of intellectual disability or fifth category. Additionally, Dr. Stacy testified that none of the records provided any indication that claimant had any diagnosis or exhibited any deficits in developmental areas that would qualify her for services from IRC.

10. In conclusion, Dr. Stacy stated that claimant does not meet the DSM-5 criteria for an intellectual disability or a condition closely related to intellectual disability that requires treatment similar to a person with intellectual disability. Accordingly, Dr. Stacy concluded that the evidence did not support a finding that claimant was eligible for regional center services.

TESTIMONY OF CLAIMANT'S MOTHER

11. Claimant's mother adopted claimant when claimant was eight weeks of age, and testified regarding claimant's history and development. She explained that claimant was born prematurely to a mother with a history of methamphetamine use; at birth claimant had a diagnosis of dysplastic corpus callosum, which as discussed in the

2016 Loma Linda University report. That condition can result in deficits in processing speed, executive function, verbal encoding, math, and skills required for social comprehension and reasoning, which is consistent with claimant's presentation. She stated that her biggest concerns for claimant are her independent living skills and ability to live safely. Claimant's mother argued that claimant's daily living skills score from the Vineland Adaptive Behavior Scales – third edition, as shown in Dr. Brook's report, showed results of "low" in the daily living skills. However, it is noted that these results come directly from reports made by claimant's mother to Dr. Brooks. Claimant's mother stated that claimant has to be reminded to brush her teeth, shower and to perform other self-care tasks. She stated that claimant has forgotten to turn off the stove and has forgotten to eat. Claimant has not been able to keep a job and had a job as a farm hand for only a couple of months, but was unable to meet the expectations of her employer. She stated that claimant is not able to do simple tasks and is afraid to live on her own as a result.

12. Claimant's mother believes that claimant's full-scale IQ test shows that she is low average and as a result claimant's abilities are lower than average. She states that while claimant may have knowledge, she does not have skill to apply that knowledge. Claimant's mother believes that IRC made a discriminatory comment in claimant's assessment report by asserting that claimant's home schooling resulted in claimant having "limited experiences" as a result of "having been homeschooled her entire life." She believes that IRC is pointing to home-schooling as the cause of claimant's problems without having any facts on which to base that comment. Claimant's mother insisted that the home-schooling received by claimant was more than sufficient to provide claimant with life skills, but claimant's intellectual disabilities require the assistance of IRC so that claimant can acquire better living skills. Claimant's mother asserts that claimant's full-scale IQ score of 80 does not tell the entire story because the real issue is

claimant's adaptive functioning, which is low. Claimant's mother believes that claimant is "not intellectually disabled," but does qualify for services under the fifth category because of her low adaptive functioning. She stated that under the DSM-5, claimant meets the required criteria of intellectual disability based upon her poor adaptive functioning. However, claimant's mother provided no evidence other than the same reports relied upon by IRC to support assertion.

13. Claimant's mother believes that claimant will benefit from services from IRC, particularly to improve her life skills. She stated that she has attempted to obtain assistance for claimant from other agencies, but was repeatedly told that the agencies could not help her unless she could get claimant qualified for services from IRC. Specifically, she believes that claimant will benefit from the Transition to Independent Living course offered by Taft College, which is a program specifically focused on development of living skills. However, in order to qualify to take that course, a person must first be an IRC client. Accordingly, claimant's mother sought to obtain IRC services for claimant. Claimant's mother is trying to get claimant the help that she needs and is frustrated by the lack of results from her efforts to do so.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of

witnesses or quantity, but in its persuasive effect on those to whom it is addressed.
(*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to [an intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely

related to [an intellectual disability] or to require treatment similar to that required for individuals with [an intellectual disability].

(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 [intellectual disability], educational or psychosocial 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 [intellectual disability].

6. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

EVALUATION

7. Claimant's mother believes claimant is eligible for regional center services because of an intellectual disability or what has been labeled fifth category, a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability. The Lanterman Act and applicable regulations specify the criteria an individual must meet in order to qualify for regional center services. Dr. Stacy provided a thorough and detailed explanation of claimant's records, and explained why claimant did not qualify for regional center services. Dr. Stacy concluded that claimant's cognitive skills and intellectual abilities are in the low average to average range, and she had no significant deficits in adaptive functioning. Additionally, Dr. Stacy concluded that while claimant may have some difficulties with adaptive functioning, claimant's abilities were demonstrated on the SSSQ test showing she had good adaptive skill abilities and the capacity to develop adaptive skills. There

was insufficient evidence to conclude that claimant had a qualifying developmental disability.

8. Claimant's mother was sincere and her testimony heartfelt. She is clearly motivated by her desire to help her daughter to obtain services she believes are necessary to allow claimant to function independently, and undoubtedly has her daughter's best interest at heart. However, claimant has the burden of proving that she is eligible for regional center services. That is, she must prove it is more likely than not that she has a qualifying developmental disability. The weight of the evidence presented at hearing did not establish that claimant is substantially disabled because of an intellectual disability, or a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability. As such, claimant failed to satisfy her burden of demonstrating eligibility for regional center services under the Lanterman Act.

ORDER

Claimant's appeal from IRC's determination that she is not eligible for regional center services and supports is denied.

DATED: July 23, 2018

DEBRA D. NYE-PERKINS

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.