

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018080356

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 13, 2018.

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

Claimant's mother appeared on behalf of claimant, with the assistance of a Spanish language interpreter.

The matter was submitted on November 13, 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 July 3, 2018, IRC notified claimant, a seven-year-old-boy, that he was not eligible for regional center services because the records 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 July 5, 2018, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination. Claimant's mother disagreed with IRC's eligibility determination, and wrote that she wanted IRC to evaluate her son.

3. On August 16, 2018, according to a letter drafted by IRC, the parties held an informal meeting to discuss claimant's eligibility. Claimant's mother explained that claimant was diagnosed as delayed in Mexico, and that he is not as independent as he should be for his age. Claimant receives special education services through his school district under the categories of Other Health Impairment and Speech and Language Impairment. Claimant currently receives 30 hours per week of occupational therapy through his school district. Claimant's records did not, however, show any adaptive concerns and prior psychological testing did not show claimant meets the diagnostic criteria for autism. Following the meeting, IRC adhered to its original determination finding claimant ineligible for regional center services.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

4. 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 AUTISM

5. The DSM-5 also identifies criteria for the diagnosis of autism. The diagnostic criteria include: 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 criteria for autism.

DIAGNOSTIC CRITERIA FOR THE FIFTH CATEGORY

6. Under the "fifth category" the Lanterman Act provides assistance to individuals with a 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.

EVIDENCE PRESENTED AT THE HEARING

7. Holly Miller, Psy.D., is a staff psychologist at Inland Regional Center and testified on behalf of IRC. She obtained her Doctor of Psychology in 2009, and already

held a Master of Science in Psychology and Bachelor of Arts in Psychology. Dr. Miller has served in a variety of positions, including clinical supervisor in which capacity she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals, and has won awards in her field. Dr. Miller also has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the IRC multi-disciplinary team to review the cases of those seeking services. Dr. Miller is an expert in the areas of autism, intellectual disability, and the fifth category.

Dr. Miller reviewed claimant's Individualized Education Program Plan (IEP), medical records, and school records provided by claimant's mother. The following is a summary of Dr. Miller's testimony and the records.

Claimant's IEP showed he is a sweet, polite, respectful, and kind little boy who is very interactive with his peers. Claimant engages very well in a small group session, has a good attitude, and is able to focus on tasks. If claimant does become distracted, he can easily be refocused with prompting. Claimant has no problems in adaptive behavior and the IEP does not show that the school has any concern with autism or intellectual disability. Dr. Miller added that there is no evidence in the IEP that claimant is substantially disabled in three or more areas of a major life activity, which is also a requirement for regional center services eligibility.

Regarding an April 4, 2018, evaluation conducted by the SEARCH Family Autism Research Center, Dr. Miller again found that it did not establish claimant is eligible for regional center services. The Center assessed claimant utilizing several cognitive and adaptive measures, including the Autism Diagnostic Observation Scale, Second Edition (ADOS). Claimant did not meet the cutoff for an autism diagnosis on the ADOS. Overall,

claimant's cognitive level showed that he functions at the borderline or low average level, which is not indicative of an intellectual disability. Some behavioral concerns were noted in the report as follows: claimant is overly dependent; a picky eater; has recurrent nightmares; bites his nails; is irritable; has temper tantrums; and is often sad or worried with anxiety for no reason. Despite the behavioral concerns, overall, the report did not show claimant meets the DSM-5 diagnostic criteria for autism, intellectual disability, or the fifth category.

A summary from a January 31, 2018, visit with a doctor showed claimant was diagnosed with an intellectual delay, fine motor delay, and "dysmorphic features." However, there was nothing in the summary that explained how those conclusions were reached, what tests were administered, or who conducted the tests to reach those conclusions.

Based on the above records (no others were provided), IRC determined that an additional psychological evaluation was not warranted. Specifically, IRC concluded that the records did not show claimant displayed any cognitive or adaptive concerns that might meet the DSM-5 diagnostic criteria for autism or intellectual disability, and also did not meet the criteria for eligibility under the fifth category.

8. Claimant's mother testified that she has learned a lot throughout the process regarding claimant's challenges. She agrees with IRC that claimant functions intellectually at the borderline or low average level, but she wants another evaluation for claimant because she was referred to regional center by the SEARCH center. Claimant's mother simply wants help for her son and she does not know where else to go. She stated that claimant hits his head for no reason, does not make eye contact with people, runs out of the house for no reason, and generally has no safety awareness. Claimant receives speech and language therapy, physical therapy, occupational therapy, and pull-out services from the school, but she feels claimant needs more help. Claimant's mother

wants the best for her son so she is looking to anyone who may be able to help her obtain another evaluation.

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, 500.)

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. The term developmental disability "shall also include 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) "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 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 current terminology.

(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. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Dr. Miller's credible expert testimony that claimant did not meet the DSM-5 diagnostic criteria for autism, intellectual disability, or the criteria for a condition closely related to an intellectual disability, was un rebutted. Therefore, a preponderance of the evidence did not establish that claimant is eligible for regional center services.

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: November 21, 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.