

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018080636

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 9, 2018.

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

Claimant's mother represented claimant.¹

The matter was submitted on October 9, 2018.

ISSUE

Should IRC perform a psychological assessment of claimant to determine his intelligence quotient (IQ) score?

¹ Claimant's mother speaks Spanish, and a Spanish language interpreter translated the proceedings.

FACTUAL FINDINGS

CLAIMANT'S FAIR HEARING REQUEST

1. Claimant's mother submitted a fair hearing request on August 1, 2018. The request stated the following under the heading "Reason(s) for requesting a fair hearing":

I want a face to face psychological evaluation for my son [claimant] where they confirm me [sic] what his IQ is. The last psychological evaluation for [claimant] by IRC San Bernardino was on 5-20-2013.

The fair hearing request sought the following to resolve the complaint: "Please do a psychological face to face evaluation to [sic] my son [claimant]."

BACKGROUND

2. Claimant is a 10-year-old boy. IRC initially determined claimant was eligible for regional center services in September 2011 based on a diagnosis of Intellectual Disability. In May 2013, IRC determined claimant was eligible for regional center services based on a diagnosis of Autism Spectrum Disorder. His eligibility was reviewed in February 2018, and IRC then confirmed that claimant continues to be eligible for regional center services based on diagnoses of Autism Spectrum Disorder and Intellectual Disability.

3. Claimant has been receiving special education services through his school since 2011, when he was three years old, based on "autism." The school's September 1, 2016, Individualized Education Program (IEP) Information/Eligibility, which was written when claimant was in third grade, described how claimant's disability affected his general curriculum involvement as follows: "[Claimant's] disability has resulted in deficits in academics, social, motor, communication skills. Global delays in all area [sic] affect

progress in general education.” Claimant’s October 24, 2017, IEP, written when claimant was in fourth grade, noted that his disability is “severe,” and described how his disability affected his progress and involvement in the general curriculum as follows: “[Claimant] needs individualized instruction and a modified curriculum at his developmental level with behavioral training, sensory integration, and social skills training with progressive attempts to fade prompts to increase independent work time and attention to task.”

4. The services claimant has been receiving from the school district include special academic instruction; daily transportation; language therapy one time a week for 20 minutes in a group setting; occupational therapy one time a week for 30 minutes; and physical adaptive therapy one time a month for 30 minutes. Claimant’s mother does not believe the school has been providing adequate services. She believes that if IRC conducts another assessment she may be able to use the assessment results, including his IQ score, to convince the school to provide him additional services.

5. According to Part III of claimant’s July 3, 2018, Individual Program Plan (IPP), although claimant’s school is responsible for claimant’s educational needs, IRC agreed that claimant’s IRC Consumer Services Coordinator (CSC) would “provide information and guidance to assist parents in exploring appropriate educational objectives as well as transitional services through the school district,” including attending “IEP meetings as appropriate.” The IPP stated that “Inland Respite would provide respite services and provide family with a break.” The IPP also discussed requesting Medi-Cal or private insurance funding for Applied Behavior Analysis (ABA) services through Behavioral Autism Therapies. During this hearing, IRC represented that claimant’s mother may continue to work with claimant’s CSC to coordinate such services. According to IRC’s September 6, 2018, letter following the August 30, 2018, informal meeting between IRC and claimant’s mother, in addition to the services provided by his school, claimant was receiving one hour per week of occupational

therapy funded by Kaiser Medi-Cal insurance and his mother was in the process of obtaining speech and ABA services through her insurance.

6. IRC previously conducted psychological assessments of claimant in August 2011 and May 2013, and his school district conducted a psycho-educational evaluation of claimant in September 2017. As is explained further below, none of the examiners were able to determine claimant's IQ score during those assessments because claimant was unable to focus on the standardized testing used to calculate an IQ score. Claimant's mother wants IRC to conduct another face-to-face psychological evaluation to diagnose "all" his disabling conditions and determine his IQ score to help him obtain the services from IRC and from his school.

PREVIOUS ASSESSMENTS AND EVALUATIONS

August 30, 2011, Psychological Assessment

7. In August 2011, when claimant was two years and eleven months old, IRC referred claimant to Edward B. Pflaumer, Ph.D., for an evaluation of "possible mental retardation and autistic disorder."² Dr. Pflaumer conducted an evaluation of claimant on August 30, 2011, and prepared a report. Dr. Pflaumer's report noted that he administered the Child Development Inventory (CDI), Vineland Adaptive Behavior Scales, Autism Diagnostic Observation Schedule-Module 1 (ADOS), and Childhood Autism Rating Scale (CARS). He also attempted to administer the Wechsler Preschool and Primary Scale of Intelligence-III, Peabody Picture Vocabulary Test-III (PPVT-III), and Expressive Vocabulary Test (EVT). The report stated that "[claimant] was unable to

² This language is quoted from Dr. Pflaumer's report, which used the former terminology "mental retardation," which is now referred to as "intellectual disability."

participate in any of the intelligence testing and the assessment of his cognitive skills was completed through the Vineland and Child Development Inventory.”

In Dr. Pflaumer’s report, he concluded:

INTELLECTUAL ASSESSMENT

[Claimant’s] scores on the Vineland and the CDI placed him in the range of mild mental retardation. Both his parents contributed to the data in the Vineland, while his father filled out the CDI. Both of them agreed that the results were accurate. While observations of [claimant], included in item #14 of the CARS, reflect higher skills, most of the data reflects slowness.³

AUTISM ASSESSMENT

[Claimant’s] scores with regard to autism were similarly mixed. He earned a higher score on the ADOS, where he was indifferent to me and generally refused to participate in nearly everything. However, with his parents he was much more sociable and reports indicate that he even takes the initiative to make contact with them. The decision with

³ The report stated the following regarding item 14 of the CARS: “Intellectual Response: [claimant] is considered as bright as other children. For example, his sister didn’t learn to eat with a spoon until three years, but [claimant] began using a spoon at two. He can put puzzles together and ride tricycle well. There are many things that he can do.”

regard to autism is clearer. [Claimant] should not be diagnosed with autism since his socialization skills with his parents are strong and ritualistic/stereotypical behavior is absent. Further, he is making good progress with regard to autism-like symptoms.

It is appropriate to diagnose [claimant] with Expressive Language Disorder since his expressive skills are very limited, even with his parents. He can be diagnosed with mild mental retardation since he displays generalized delays in most areas of his development.

Based on Dr. Pflaumer's assessment, IRC determined in 2011 that claimant was eligible for regional center services based on mild Intellectual Disability. Dr. Pflaumer's report recommended re-testing in two years to chart claimant's progress and verify his eligibility for regional center services.

May 20, 2013, Psychological Assessment

8. IRC staff psychologist Sandra Brooks, Ph.D., conducted a psychological evaluation of claimant in May 2013, when he was four years and seven months old, after his parents requested a re-evaluation due to suspected autism. Although Dr. Brooks attempted to administer the Wechsler Preschool and Primary Scale of Intelligence-III (WPPSI-III), her report noted there was "[i]nsufficient data obtained to calculate test scores." Dr. Brooks wrote the following in her report under the "Intellectual Functioning" heading:

Due to [claimant's] limited verbal skills, the examiner did not administer the subtests that comprise the Verbal Scale of the WPPSI-III. Instead, the evaluator attempted to administer the Performance subtests of the WPPSI-III; however, it was not possible to calculate IQ scores due to [claimant's] limited participation in testing.

The evaluator attempted to administer the Object Assembly subtest of the WPPSI-III; however, [claimant] appeared to lose interest as testing progressed and eventually began to lose focus. [Claimant] would often stare off into space rather than focus on the activity at hand. [Claimant] eventually refused to participate further. He would give puzzle pieces to the evaluator or try to get up from the testing table. Testing was subsequently discontinued.

The "Summary" portion of Dr. Brooks's report provided:

[Claimant] is an adorable little boy. It was not possible to complete intellectual testing during today's evaluation due to [claimant's] limited participation. It appears likely that [claimant] is experiencing cognitive delays. Further testing should be conducted in the future when [claimant's] test taking skills have further developed in order to obtain an accurate assessment of his intellectual ability. [Claimant's] behavioral presentation is consistent with the diagnosis of Autistic Disorder. This diagnosis indicates that [claimant] has significant challenges in the areas of social interaction,

reciprocal communication, stereotypical behaviors, and a restricted range of interests and activities. [Claimant] is fortunate to have loving and nurturing family members who are interested in learning new techniques and strategies to facilitate his development.

Relying on Dr. Brook's May 20, 2013, evaluation, IRC determined in May 2013 that claimant was eligible for regional center services based on a diagnosis of autism.

September 21, 2017, Psycho-Educational Report

9. Claimant's school district referred him for mandatory re-evaluation in 2017, when he was eight years and eleven months old, in fourth grade, and attending the "upper grade (4-6) Autism classroom." The school district's educational psychologist prepared a September 21, 2017, Psycho-Educational Report. That report stated that although claimant was initially compliant when asked to move to the testing room;

[A]fter a short time, he did not respond to many of [sic] tasks. Encouragement was given, redirection, breaks, incentives, but he was not able to consistently provide responses. The assessments were attempted at different times, and also in the classroom, with an aide present. His teachers and aides were interviewed to gain more information, as well as multiple observations.

Due to the difficulty maintaining claimant's attention, the "testing was spread over six sessions, keeping times short, and using high sensory items." The report provided the following under the "Summary of Assessment Results" heading:

Current nonverbal cognitive assessments were difficult to ascertain, as [claimant] was not responsive to the requests to point, choose, or indicate his responses. When verbal tasks were attempted, it was not possible to get a reliable score, due to non-responsiveness.

After reviewing the 2011 and 2013 Psychological Assessments and the 2017 Psycho-Educational Report, IRC determined on February 6, 2018, that claimant was eligible for regional center services based on diagnoses of Autism Spectrum Disorder and mild Intellectual Disability. Claimant continues to be eligible for regional center services based on those diagnoses.

DR. MILLER'S TESTIMONY

10. Holly A. Miller, Psy.D., is a staff psychologist at IRC, where she has worked since 2016. Her duties include conducting psychological assessments to determine regional center eligibility. She received her Bachelor of Arts Degree in Psychology from the University of California, Riverside in 2002; Master of Science Degree in Psychology from the University of La Verne in 2006; and Doctor of Psychology Degree from the University of La Verne in 2009. She is licensed as a clinical psychologist by the State of California.

Dr. Miller was a member of the eligibility team that assessed claimant's regional center eligibility on February 6, 2018. The Eligibility Determination form contained the following handwritten comments: "(2011 & 2013 IRC evaluations reviewed.) Not able to participate in standardized testing. [G]lobal delays are evident based on all available information." Dr. Miller explained during her testimony that the school district's 2017 Psycho-Educational Report was also reviewed. The eligibility team determined on February 6, 2018, that claimant was eligible, and the following was handwritten at the

bottom of the Eligibility Determination form: "Review of eligibility status scheduled in: 3 years to monitor cognitive dev. & review ID diagnosis/eligibility."

Dr. Miller explained that once a consumer is determined to be eligible for regional center services, additional assessments, which may involve document review and/or direct psychological evaluations, are usually conducted only if additional information is necessary to determine if a consumer continues to be eligible for regional center services. In 2018, an additional face-to-face assessment was not necessary to determine that claimant remained eligible for regional center services because the previous assessments, including the school district's September 2017, Psycho-Educational Report, showed that claimant was eligible. The school district will be required to perform another psycho-educational assessment in three years, and Dr. Miller explained that IRC will review the school district's assessment at that time.

Based on Dr. Miller's review of the records, including the previous psychological assessments and the 2017 Psycho-Educational Report, Dr. Miller stated that claimant is eligible for regional center services and no additional evaluations are currently necessary. She also noted that IRC does not conduct assessments to diagnose conditions that are not relevant to regional center eligibility. Therefore, although claimant's mother would like to know all disabling conditions from which her son may suffer, a regional center evaluation would not include diagnoses of all such conditions, as the purpose of the assessment would be determine whether he is eligible for regional center services, and he has already been found to be eligible.

Dr. Miller pointed out that an IQ score was not necessary or helpful in determining claimant's regional center eligibility or the regional center services which claimant may require. In all three assessments, conducted in 2011, 2013, and 2017, claimant was not able to participate in the standardized testing necessary to obtain a valid IQ score, and despite that fact, all three evaluations consistently showed claimant

was eligible for regional center services. Even though claimant's mother hopes that an IRC evaluation might assist her to obtain additional special education services for claimant at his school, a regional center evaluation is not required by the school district and IRC does not have any authority over the school district.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The burden of proof is on the claimant to establish IRC is required to conduct additional psychological testing. (Evid. Code, § 115.) The standard is a preponderance of the evidence. (Evid. Code, § 500.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, emphasis in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

STATUTORY AUTHORITY

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., governs the state's responsibilities to persons with developmental disabilities.

4. Welfare and Institutions Code section 4501 states:

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. ...

5. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term 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, but shall not include other handicapping conditions that are solely physical in nature.

6. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical

diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs” (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, “the regional center may consider evaluations and tests ... that have been performed by, and are available from, other sources.” (Welf. & Inst. Code, § 4643, subd. (b).)

7. Welfare and Institutions Code section 4643.5, subdivision (b), discusses when an additional assessment may be necessary after a consumer has been found to be eligible for regional center services:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

8. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. However, the criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act and California Code of Regulations, title 17.

EVALUATION

9. There was no dispute that claimant suffers from cognitive deficits, and he has been determined by IRC to be eligible for regional center services since 2011. IRC referred claimant for a psychological assessment in 2011, an IRC staff psychologist conducted another assessment in 2013, and claimant’s school recently conducted a psycho-educational evaluation in 2017. During all three of those evaluations, the

examiners attempted to administer standardized tests to assess claimant's IQ. Each time, claimant's level of participation was not sufficient for the examiners to obtain a valid IQ score. Because claimant has already been determined to be eligible for regional center services, a further evaluation is not necessary at this time. His school will re-test him in three years and IRC will review those results at that time. Although claimant's mother has legitimate concerns about her son and desires further testing and evaluation, IRC is not required to conduct the further assessment requested. Claimant's mother may want to ask the school district to conduct additional testing sooner than three years after the most recent 2017 psycho-educational evaluation, as nothing in this decision precludes claimant's mother from asking the school district to make further attempts to assess claimant's IQ score.

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ORDER

Claimant's request that Inland Regional Center perform an additional psychological assessment to ascertain claimant's IQ score is denied.

DATED: October 19, 2018

THERESA M. BREHL

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.