

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018100201

DECISION

On November 13, 2018, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California.

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

Claimant is eight years old and is represented by his adoptive mother. No one appeared at the hearing on claimant's behalf.

Oral and documentary evidence was introduced, and the matter was submitted on November 13, 2018.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) on the basis of a diagnosis of intellectual disability, autism spectrum disorder, cerebral palsy, epilepsy, or a disabling

condition found to be closely related to intellectual disability or to require treatment similar to that for individuals with an intellectual disability (fifth category)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On September 5, 2018, IRC notified claimant that he was not eligible for regional center services based on a review of his records because he does not have a disability that qualifies him to receive such services.

2. On September 25, 2018, claimant's adoptive mother filed a fair hearing request on claimant's behalf appealing IRC's decision. The Fair Hearing Request (Request) challenged IRC's determination that claimant was not eligible for regional center services based on a substantial handicap as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. The Request asserted that claimant was eligible for regional center services and that claimant "need[s] to be reexamined."

3. This matter was set for hearing on November 13, 2018, at 10:00 a.m. On October 3, 2018, the Notice of Hearing was mailed to the address provided by claimant's adoptive mother in the Request for Fair Hearing she filed with the IRC.

4. On November 13, 2018, Administrative Law Judge Debra D. Nye-Perkins called the case for hearing. Ms. Teweldebrhan represented IRC. No one appeared at the hearing on behalf of claimant. After no appearance was made by claimant for 30 minutes, the case proceeded.

5. The burden rests on claimant to establish by a preponderance of the evidence that he suffers from a qualifying, substantial developmental disability. (Evid. Code, § 115.) By failing to appear, claimant failed to establish his eligibility.

6. Additionally, the burden is on claimant to diligently prosecute his appeal/fair hearing request. Claimant and his representative were properly notified of the date, time and place of hearing and failed to appear for the hearing. Consequently, claimant is deemed to have abandoned his appeal/fair hearing request. Despite claimant's failure to appear at the hearing, IRC presented evidence to support its denial of claimant's request for services.

TESTIMONY OF DR. STACY

7. Ruth Stacy, Psy.D., is employed by IRC as a staff psychologist. She has held that position for three years. Her duties include reviewing records, performing comprehensive psychological assessments, and evaluating individuals' eligibility for regional center services. Prior to her position as a staff psychologist, Dr. Stacy worked for 15 years at IRC as a senior counselor in the intake department. Dr. Stacy reviewed claimant's records and formed the opinion that claimant was not eligible for IRC services.

8. Dr. Stacy testified that the eligibility criteria set forth in the Lanterman Act govern whether claimant is eligible for services at the regional center. Specifically, in order to be eligible claimant must have a developmental disability that results from an intellectual disability, autism, spectrum disorder, cerebral palsy, epilepsy, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, originating before the individual attains 18 years of age and that continues, or is expected to continue, indefinitely and constitutes a substantial disability for that individual. Dr. Stacy further testified that in order to determine whether a diagnosis of a developmental disability is substantially handicapping so as to qualify for services from IRC, there must be significant functional limitations in at least three of the seven life activities listed in California Code of Regulations, section 54001, which are "self-care," "receptive and

expressive language," "learning," "mobility," "self-direction," "capacity for independent living," and "economic self-sufficiency." She stated that because claimant is only eight years old, the life activities "capacity for independent living" and "economic self-sufficiency," do not apply. She explained that her review of claimant's records indicated that claimant did not have a diagnosis of intellectual disability, autism, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, and that claimant did not have any significant functional limitations in any of the seven listed life activities.

Dr. Stacy testified that, based on her review of records, claimant received early start services prior to turning three years old. When he reached age three in 2013, IRC evaluated claimant for a determination of eligibility for services and determined he was not eligible because he did not meet the required Lanterman Act criteria. Claimant's family reapplied for services from IRC on August 28, 2018, and, based upon a review of claimant's records, he was again found not to be eligible for services because he did not have a substantial disability as a result of a diagnosis of a developmental disability. Dr. Stacy noted that claimant's school records indicated he was receiving special education services as a result of a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), which is not a qualifying diagnosis. She further testified that documentation in claimant's file from 2013 reflected that claimant had cognitive skills in the average range and thus established he did not have an intellectual disability. Additionally, those documents showed claimant's social and emotional skills were also in the average range, indicating he did not suffer from autism spectrum disorder. Furthermore, Dr. Stacy stated that those same documents demonstrated that claimant's self-help skills were age appropriate and that he did not have significant deficits in self-care, receptive and expressive language, learning, mobility, or self-direction. Dr. Stacy concluded that claimant was not eligible for IRC services on the basis of intellectual disability, autism

spectrum disorder or the fifth category because claimant does not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code of Regs., tit. 17, § 54001, subd. (a).)

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TESTIMONY OF MITSUHIKO TSUKIMOTO, M.D.

9. Mitsuhiko Tsukimoto, M.D., has worked at IRC as a medical consultant for the past year and four months. His duties include reviewing documents, including medical records, as well as examining individuals to determine if they are eligible for services pursuant to the Lanterman Act. Dr. Tsukimoto received his medical degree in 2012 from the Keck School of Medicine of the University of Southern California and completed his residency in Pediatrics in 2015 at Loma Linda University Children's Hospital. He currently works as an attending physician in the General Pediatrics and Palliative Care department of Loma Linda University Children's Hospital.

10. Dr. Tsukimoto testified he reviewed claimant's records for a determination of whether claimant qualifies for services from the regional center based upon the criteria of epilepsy and cerebral palsy. Dr. Tsukimoto only reviewed claimant's records and did not personally examine claimant as part of his assessment. He reviewed medical records from claimant's primary physician, as well as medical records from claimant's neurologist. Dr. Tsukimoto stated that none of the records he reviewed indicated that claimant ever had a diagnosis of cerebral palsy, and as a result he ruled out cerebral palsy as a basis of eligibility for claimant. However, Dr. Tsukimoto stated that the records showed claimant did have a diagnosis of epilepsy.

11. Dr. Tsukimoto explained that epilepsy is a disorder caused by electromagnetic activity in the brain causing seizures that can result in abnormal

movements or changes in consciousness of an individual. He stated that the severity of epilepsy can vary widely, with some individuals having only a few seizures early in their life and never having them again, while other individuals may have so many seizures of such severity as to substantially affect their ability to function. Additionally, some epileptics can control their seizures completely with medications, while others cannot. Dr. Tsukimoto explained that in order for claimant to qualify for services from the regional center based on a diagnosis of epilepsy, his epilepsy must be substantially disabling. In order to be substantially disabling there must be significant functional limitations in at least three of the seven life activities listed in California Code of Regulations, section 54001, which are "self-care," "receptive and expressive language," "learning," "mobility," "self-direction," "capacity for independent living," and "economic self-sufficiency." He stated that because claimant is only eight years old, two of the seven listed life activities, "capacity for independent living" and "economic self-sufficiency," do not apply.

12. Dr. Tsukimoto stated that his review of claimant's medical records showed that claimant first had seizures at the age of six months and that his physician immediately gave him medication to control the seizures. Claimant's seizures were well controlled until his primary physician decided to decrease the dosage of his medication, which caused the seizures to return. Dr. Tsukimoto stated that the medical records reflected that the last time claimant had a seizure was in September 2016, when he underwent an episode of jerking and falling lasting three to four minutes. Thereafter, claimant's primary physician increased claimant's anti-seizure medication, and no further seizure activity was noted in claimant's medical records. The last visit noted in claimant's medical records was with his neurologist on March 21, 2018, at which time claimant's medications were changed because his family thought the medication caused irritability. However, there is no indication claimant has had any seizures since September 2016,

and his seizure activity has thus been controlled by medication. Dr. Tsukimoto noted that because claimant's seizures do not affect his daily life and are controlled by medication, claimant's epilepsy is not substantially disabling as required for eligibility under the Lanterman Act. Accordingly, Dr. Tsukimoto concluded that claimant is not eligible for regional center services under the criterion of epilepsy or cerebral palsy.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center 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. Pursuant to the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. 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, i.e., a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before 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 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;

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 usage.

(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. Welfare and Institutions Code section 4512, subdivision (l), provides:

Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

California Code of Regulations, title 17, section 54001, subdivision (a), also defines “substantial disability” and requires “the existence of significant functional limitations, as determined by the regional center, in three or more of the ... areas of major life activity” listed above.

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

EVALUATION

8. The information contained in claimant's records and reviewed by IRC does not support a reasonable belief that claimant suffers from a qualifying developmental disability, other than epilepsy, and does not support a reasonable belief that claimant's diagnosis of epilepsy is a substantial disability that would trigger IRC's obligation to provide services to claimant. Claimant's medical records show that claimant suffers from epilepsy, but his epilepsy is not a substantially disabling condition so as to qualify claimant for regional center services.

9. Claimant failed to appear and present any evidence to support his contention that he is eligible for regional center services, and thereby failed to meet his burden of proof to establish that he is eligible to receive services under the Lanterman Act based on any substantially disabling diagnosis. The evidence presented by IRC established that claimant does not have a condition that makes him eligible for regional center services.

ORDER

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

DATED: November 29, 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.