

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018100212

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 8, 2018.

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

Claimant's father appeared on behalf of claimant, who was not present.

The matter was submitted on November 8, 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 September 5, 2018, IRC notified claimant, an 8-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 September 12, 2018, claimant's father filed a Fair Hearing Request on claimant's behalf appealing IRC's determination. Claimant's father disagreed with IRC's eligibility determination and wrote that he wanted IRC to evaluate her son.

3. On October 12, 2018, according to a letter drafted by IRC, the parties held an informal meeting to discuss claimant's eligibility. Claimant's father and representatives from IRC discussed claimant's records and the Fair Hearing Request. IRC representatives explained that claimant's records show he has impulsive behavior, is easily distracted, inattentive, and has difficulty focusing in the classroom, and that these behaviors are more indicative of Attention Deficit Hyperactivity Disorder (ADHD) than 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, Fifth Edition (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 THE FIFTH CATEGORY

5. Under the fifth category, the Lanterman Act provides assistance to individuals with 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.

DIAGNOSTIC CRITERIA FOR AUTISM

6. The DSM-5 also identifies criteria for the diagnosis of autism. The diagnostic criteria includes 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 to qualify for regional center services under the eligibility criterion of autism.

EVIDENCE PRESENTED AT THE HEARING

7. Holly Miller, Psy.D., is a staff psychologist at Inland Regional Center. 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 where 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 multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Miller is an expert in the diagnosis of autism, intellectual disability, the fifth category, and in the assessment of individuals for regional center services.

8. Dr. Miller reviewed documents provided by claimant, which included school evaluations and claimant's individualized education plan (IEP). Her testimony and the records are summarized as follows:

Claimant receives special education services under the categories of speech and language impairment and other health impairment. Claimant's IEP shows he is a respectful child who enjoys interacting with his peers. Claimant is able to make friends and enjoys working in small group settings. There were no social problems noted. Claimant's school psychologist included concerns in the IEP regarding impulsivity, distractibility, and the inability to focus. However, these behaviors are typically not indicative of a developmental disability; to the contrary, they typically are more consistent with ADHD. There is nothing in claimant's IEP that is indicative of autism, intellectual disability, or any challenge that would meet the criteria for the fifth category. Even if there were, there is no evidence that claimant exhibits significant functional limitations in three or more major life activities, which is a requirement to become eligible for regional center services under the Lanterman Act.

Regarding a December 8, 2017, Speech and Language Evaluation conducted by claimant's school district, nothing in the report was indicative of autism, intellectual

disability, or the fifth category. Overall, the report simply concluded claimant has a speech and language impairment.

Regarding a December 8, 2017, assessment conducted by a multidisciplinary team at claimant's school district, claimant was found to have overall delays in speech for his chronological age. His receptive and expressive communication skills in English were deficient, but when tested in Spanish, his receptive and expressive communication skills were average. In short, there was nothing in this assessment that presented concerns of autism, intellectual disability or the fifth category.

On February 27, 2018, the Riverside University Health System assessed claimant. Claimant's father submitted a two-page summary of their findings. The summary of findings stated claimant was diagnosed with autism. However, nothing in the summary indicated what standardized tests were administered, by whom, or how the diagnosis was reached. It did not indicate if the diagnosis was based on a present evaluation or by history (i.e. if the diagnosis was obtained from records). Overall, the summary showed claimant has average intelligence, which is not indicative of an intellectual disability. Finally, there was nothing in the summary to show claimant would be eligible for regional center services under the fifth category.

Based on the records provided, Dr. Miller concluded claimant did not qualify for regional center services under a diagnosis of autism, intellectual disability, or the fifth category.

9. Claimant's father testified that he and his wife just want an evaluation for claimant to determine what his needs are. Claimant receives services from his school but they are not sufficient to meet claimant's needs. When claimant's father and his family first came to the United States, claimant was already older so he did not benefit from Early Start services like his younger brother is currently experiencing. Because claimant

did not receive services early in his life, claimant's father feels like doors are being closed to claimant.

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. A developmental disability "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) Originate before age eighteen;

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 the currently used terms.

(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's father clearly wants the best for his son and is commended for exploring all available avenues to get claimant the help he needs to excel in school. However, the records provided do not show claimant meets the diagnostic criteria under the DSM-5 for autism, intellectual disability, or the fifth category. The records do show claimant has some deficits in speech and language, and it is because of those deficits claimant receives special education services. Nonetheless, a DSM-5 diagnosis under each of these three categories requires much more than speech and language difficulties. In addition, even if a person has a qualifying diagnosis, he or she must also exhibit substantial functional limitations in three or more areas of a major life activity, as

appropriate for the person's age. None of the records provided show claimant has significant problems in the area of adaptive skills.

The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet to qualify for regional center services, and the burden is on claimant to establish his eligibility for regional center services. Claimant did not meet his burden and the appeal must be denied.²

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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

² Should claimant's father obtain additional records that suggest claimant would be eligible for regional center services, he is not barred from requesting an eligibility determination in the future.

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.