

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019010082

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 14, 2019.

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

Claimant's mother represented claimant, who was present at the hearing.

The matter was submitted on February 14, 2019.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of autism spectrum disorder (autism)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On November 29, 2018, IRC notified claimant, a 35-year-old man, 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 as an individual with an intellectual disability.

2. On December 22, 2018, claimant filed a Fair Hearing Request appealing IRC's determination. In the request, claimant's mother, his authorized representative, wrote that claimant was diagnosed with autism after he turned 18 years of age, but he had been misdiagnosed as a minor.

3. On January 8, 2019, a telephonic informal meeting was held between representatives of IRC and claimant's mother to discuss the Fair Hearing Request. In a letter memorializing the meeting, IRC maintained its position that claimant was not eligible for regional center services.

DIAGNOSTIC CRITERIA FOR AUTISM

4. *The Diagnostic and Statistical Manual of Mental Disorder – Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped 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 autism.

EVIDENCE PRESENTED AT HEARING

5. Ruth Stacy, Psy.D., a licensed clinical psychologist, has been a staff psychologist at IRC since 2015. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for the past 28 years. In addition

to her doctorate degree in psychology, she also holds a Master of Arts in counseling psychology, a Master of Arts in sociology, and a Bachelor of Arts in psychology and sociology. Dr. Stacy is an expert in the diagnosis of persons with autism.

6. Dr. Stacy conducted an extensive review of claimant's past records, which included the following: Individualized Education Plans (IEPs); a psychoeducational assessment, various medical records, and two assessments from Riverside Psychiatric Medical Group. The following is a summary of Dr. Stacy's testimony, assessment, and the above-referenced documents.

7. The California School for the Deaf conducted a psychoeducational assessment when claimant was 16 years old. Among the evaluators was a clinical psychologist, who administered several tests including the Weschsler Intelligence Scale for Children-Third Edition (WISC-III), the Woodcock-Johnson Revised (WJ-R), and the Bender Motor Gestalt Test, and the Test of Non-Verbal Intelligence-III. The testing revealed that claimant's nonverbal cognitive skills were within the low-average range, while his abstract reasoning skills were within average. The evaluators concluded that claimant had the cognitive ability to function independently, without much guidance. The evaluation concluded that claimant continued to qualify for special education services under the category of hearing impairment. Dr. Stacy noted that there was no reference to autism or autistic behaviors in the report, and no autism tests were administered. The testing of claimant's receptive and expressive verbal speech indicated no difficulties in this regard, and there was nothing in the report to even hint at autism-like behavior.

8. An IEP conducted by the California School for the Deaf when claimant was 17 years old indicated that claimant received special education services under the category of "deaf/hard of hearing." The IEP noted that claimant had proficient expressive and receptive communication skills and had good conversational manners.

As for social/emotional skills, the IEP noted that his behaviors appeared normal for his age, he demonstrated appropriate manners and mature behaviors, and was cooperative. He had a small group of friends with whom he socialized, and got along well with adults. He participated in group discussions and had a good attitude toward learnings. Dr. Stacy noted that there was nothing in the IEP indicative of autism. Instead, the characterizations of claimant's communication skills and social/emotional skills would argue against a diagnosis of autism.

9. On December 9, 2016, claimant was evaluated by Ronald Offenstein, Ph.D., at the Riverside Psychiatric Medical Group. The evaluation lasted 45 minutes. Dr. Offenstein's report noted that claimant has had a history of depression and bipolar disorder, for which he was taking medication. Claimant reported difficulty staying focused and staying organized. Dr. Offenstein administered the Generalized Anxiety Disorder -7, which showed that claimant had widespread worrying and restlessness. Dr. Offenstein also administered the World Health Organization Disability Assessment Schedule 2.0 (WHODAS). Dr. Offenstein diagnosed claimant with autism, bipolar disorder, and attention-deficient/hyperactivity disorder (ADHD). Dr. Offenstein noted that claimant had the ability to detect in others that they were bored or disinterested in what he had to say, but this occurred when he talked excessively. Claimant indicated that he could not read body language, although he could discern anger. Dr. Offenstein believed claimant was deficient in relationships with others. Dr. Offenstein referred claimant to Antonius Brandon, Ph.D., for a second opinion.

10. On December 30, 2016, claimant was evaluated by Dr. Brandon, also with the Riverside Psychiatric Medical Group. This evaluation also lasted 45 minutes. Dr. Brandon's report reiterated the results obtained by Dr. Offenstein and confirmed Dr. Offenstein's diagnoses.

11. Dr. Stacy disagreed with the diagnosis of autism by Drs. Offenstein and Brandon. Neither of the tests Dr. Offenstein administered were specific for autism. Instead, the GAD-7 is a test for anxiety and the WHODAS is a generalized test for health and disability. Both are general screening tools for mental health issues and are not specific measures for autism. She noted that bipolar disorder and ADHD can produce behaviors that mimic autism in terms of presentation of social skills. The evaluations contained no descriptions of repetitive behaviors or any other information that would support an autism diagnosis. Dr. Stacy noted that a typical autism assessment takes approximately three hours to complete; in this case, each evaluation lasted only 45 minutes.

12. Bipolar disorder and ADHD are mental health conditions and are not developmental disabilities that qualify a person for regional center services. Dr. Stacy concluded that the information contained in the medical records provided no indication that claimant had ever presented autism-related symptoms. Consequently, IRC's eligibility determination team concluded that claimant was not eligible for IRC services and no further "intake" services were required.

13. Claimant's mother testified at the hearing. Claimant's mother expressed her frustration with the system, noting that claimant tried to get services from the Department of Rehabilitation but they sent him back to regional center. She was dismayed to learn that IRC initially had scheduled an assessment, but then later cancelled the assessment and concluded that claimant was not eligible. She took claimant to get tested for autism two years ago because of his increasing behavioral issues. She had not been aware that the evaluators did not perform any autism-specific testing. She noted that when claimant was a child, nobody thought to ask about autism because the focus had been on claimant's loss of hearing, which occurred during childhood.

14. During the hearing claimant was attentive and actively engaged. Claimant testified about his own thoughts and frustration with “going in circles” with regards to multiple agencies. He believes that autism was not as frequently recognized when he was a child as it is now, and not all the symptoms are required in order to have a diagnosis. He doubted how IRC could claim that he does not have autism without evaluating him in his school or home environment, or observing his daily behaviors. Claimant’s mood, affect, questions, responses, explanations, and overall behavior at the hearing was very reflective of his surroundings and showed that he has social and emotional skills and can interact with others. He did not exhibit any restricted repetitive and stereotyped patterns of behavior, interests, or activities. In general, claimant seems like a pleasant person but also very frustrated with the process.

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 and 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. 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.

3. 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 includes "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. (*Ibid.*)

4. 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;

(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

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.

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."

5. 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.

CONCLUSION

6. Claimant has the burden to establish eligibility for regional center services. Claimant did not meet his burden. The records submitted do not show claimant meets the DSM-5 diagnostic criteria for autism. Instead, the behavioral challenges affecting claimant are more likely related to bipolar disorder or ADHD, which are not qualifying diagnoses for regional center services. There is no history of an autism diagnosis in any of the records provided until the Riverside Psychiatric Medical Group reports in late 2016. However, by virtue of the lack of any reference to autism or autistic-like behaviors in claimant's past records, and the failure to administer any autism-specific testing, the recent diagnosis of autism has no factual underpinning. Moreover, claimant's past educational history shows claimant had communication and social/emotional skills that were inconsistent with an autism diagnosis. In other words, even assuming one were to ignore claimant's hearing challenges early in life and focus on the behaviors and symptoms present in his early medical and psychological reports, there is nothing consistent with the diagnostic criteria for autism under the DSM-5.

7. Claimant's frustration with the process is understandable. However, a preponderance of the evidence did not establish that claimant has autism, and IRC is not required to perform any additional intake services or assessments.

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: February 26, 2019

ADAM L. BERG

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.