

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019020528

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on April 4, 2019.

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

Claimant's grandmother, who is also her conservator, represented claimant, who was present.

The matter was submitted on April 4, 2019.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 25-year-old woman. On January 18, 2019, IRC notified claimant's grandmother that claimant is not eligible for regional center services because the records provided to IRC did not establish that claimant 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, which began prior to the age of 18.

2. On January 30, 2019, claimant's grandmother filed a fair hearing request alleging that claimant is not independent; is legally blind; and needs services based on a diagnosis of autism.

3. On February 21, 2019, claimant's grandmother and Ms. Neal met telephonically to discuss the fair hearing request. Following the meeting, IRC adhered to the determination that claimant was not eligible for regional center services. Ms. Neal memorialized the informal meeting in a letter, which stated:

Thank you for attending the informal meeting held telephonically on February 20, 2019, regarding your fair hearing request. The issue at hand is whether claimant is eligible for regional center services due to Autism Spectrum Disorder. For your information, the law about who is eligible for regional center services and what "substantial disability" means, is included in attachment 1.

During the informal meeting, introductions were made and the purpose of the informal meeting was discussed. Persons present included you and I. You presented your concerns

regarding claimant and why you feel she is eligible for services. You explained that you believe claimant has Autism Level 2. You explained that she is able to complete her self-care skills, but she requires verbal prompting. You further explained that she does not understand things because her intellectual and cognitive abilities are low. You stated that claimant maintains low emotion and she does not do well with people. You further stated that you are seeking regional center services because you would like for her to attend a program and because you need assistance as you are on a limited income and she does not receive social security benefits.

Claimant is your granddaughter from your adopted daughter. You have been caring for her for the past 2 years and have since become her conservator. You explained that her parents did not accept that she had a disability and therefore did not seek assistance for her while she was growing up.

Claimant is legally blind. You explained that she is almost completely blind in her left eye and she is legally blind in her right eye. You also explained that she has had vision problems since she was 5 years old. ... Claimant is currently not working or going to school. She was residing in Tennessee with her parents where she graduated high school with a diploma in 2016. You explained that she attended

college in Tennessee, but she did not do well academically. Upon relocating to Riverside, she also attended college and was not successful, however, claimant would like to attend Riverside Community College. Claimant is being provided with vocational assistance through the Department of Rehabilitation (DOR). She attended DOR orientation on February 13, 2019 and will be meeting with a counselor.

Claimant loves animals and is currently volunteering once a week for a period of 2 hours at [an animal adoption center] in Riverside.

[C]laimant has been attending equine therapy once per week since August of 2017 through Riverside Equine Friends. You fund out of pocket for this service. ...

Regarding behavioral concerns, you stated that at times claimant will be angry and that you try to keep her under control. You explained that when angry claimant will be rude and sarcastic to you, slam her door, and go to her room.

At this time, IRC is standing by its decision that claimant is not eligible for regional center services. The information provided, indicated that she received special education services due to Specific Learning Disability and Language Impairment. There was no indication in the records provided that claimant was diagnosed with Autism Spectrum Disorder or exhibited characteristics of Autism Spectrum Disorder

prior to the age of 18. However, IRC has agreed to review any additional records you are willing to provide. ...

DIAGNOSTIC CRITERIA FOR AUTISM

4. The *Diagnostic and Statistical Manual of Mental Disorders, 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 spectrum disorder to qualify for regional center services under autism.

EVIDENCE PRESENTED BY IRC

5. Dr. Greenwald has been a licensed psychologist since 1987. He is licensed in California and Florida. He has been a staff psychologist at IRC since 2008. Dr. Greenwald has extensive experience in conducting psychological assessments of children and adults suspected of having developmental disabilities that may qualify them for regional center services. He also supervises psychological assistants who conduct similar assessments. Dr. Greenwald is an expert in the field of psychology, as it relates to the diagnosis of autism under the DSM-5 and the Lanterman Act. The following is a summary of Dr. Greenwald's testimony and the reports provided to IRC.

The records reviewed included two letters from Lisa Marie Dryan, LCSW, dated August 30, 2018, and March 18, 2019; a letter from Margaret McLeoud, M.D., dated October 11, 2018; a medical report dated October 3, 2018; claimant's old Individualized

Education Program plan (IPP) dated April 2, 2012; and a psychological assessment completed by Gregory Crawford, Psy.D., dated October 4, 2018.

Claimant's IEP showed that, when in school, she received special education services under the categories of Specific Learning Disability and Speech and Language Impairment. The IEP did not contain any information concerning an autism diagnosis.

The August 30, 2018, letter from Ms. Dryan indicated that she diagnosed claimant with autism. The letter did not contain any information regarding whether assessments were completed or how she diagnosed claimant with autism. Ms. Dryan is also not a licensed clinical psychologist. Ms. Dryan's letter dated March 18, 2018, similarly indicates that she diagnosed claimant with autism, but provides no supporting data concerning how that diagnosis was reached or what her qualifications are to render such a diagnosis.

Similarly, the letter from Dr. McLeoud dated October 11, 2018, stated "this [patient] has autism. She is also legally blind with Intellectual/Developmental Delay." The letter did not contain any additional information regarding any testing that had been completed to reach that diagnosis, whether it was a DSM-5 diagnosis, or any other information showing how Dr. McLeoud came to that conclusion.

The October 4, 2018, report by Dr. Crawford showed that he administered the following assessments to claimant: Adaptive Behavior Assessment System, Third Edition (ABAS); Autism Diagnostic Observation Scale, Second Edition (ADOS); California Verbal Learning Test, Third Edition; Gilliam Autism Rating Scale, Third Edition (GARS); and the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS). According to the ADOS and GARS, autism was indicated. According to the ABAS, which assesses a person's adaptive functioning, claimant was profoundly impaired. According to the WAIS, claimant's cognitive functioning is in the low average range.

Dr. Greenwald disagreed with Dr. Crawford's assessment. He explained that the diagnosis of autism is highly suspect, given that it occurred after the developmental period and that all other records prior to Dr. Crawford's report were devoid of any autism diagnosis. Dr. Greenwald also explained that there is likely a lot of error variance present in the measures because there are previous indications that claimant was diagnosed with depressive disorder and speech and language disorder, both of which would affect scores on the ADOS.

CLAIMANT'S GRANDMOTHER'S TESTIMONY

6. Claimant's grandmother testified that claimant has behavioral and intellectual challenges, and her parents were in denial for years about her disabilities. She testified that everyone always says there are services available but she has not found that to be true. Claimant is currently seeking services from DOR and hopes to study Latin in college.

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.)

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.

EVALUATION

6. The burden was on claimant to establish eligibility for regional center services. Claimant did not meet that burden.

There is no evidence claimant was diagnosed with autism prior to age 18. Claimant has never been served in special education under the category of autism; rather, she was served under Speech and Language Impairment and Specific Learning Disability. The letters from Ms. Dryan and Dr. McLeoud also were written long-after claimant turned 18, and contained no supporting documentation as to how they reached their autism diagnosis. Neither Ms. Dryan nor Dr. McLeoud are licensed clinical psychologists. Finally, although claimant did receive a diagnosis of autism from Dr. Crawford, that diagnosis occurred in 2018 when claimant was 24 years old. Further, the autism diagnosis, according to Dr. Greenwald, is highly suspect given claimant's history of depressive disorder and speech and language disorder, both of which would affect scores on the ADOS.

Even assuming claimant did have autism, a diagnosis of autism under the DSM-5 alone is not sufficient to qualify a person for regional center services. The evidence did not establish that claimant has *significant* functional limitations in receptive and expressive language; learning; self-care; mobility; or self-direction. Thus, even if she met the diagnostic criteria for autism, claimant still would not be eligible for regional center services.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is not eligible for regional center services and supports is denied.

DATED: April 15, 2019

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.