

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2019050657

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 19, 2019, in San Bernardino, California.

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

There was no appearance on behalf of claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 19, 2019.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

BACKGROUND

1. On April 16, 2019, IRC sent claimant's mother a Notice of Proposed Action stating that claimant, a 16-year-old boy, 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.

2. On April 30, 2019, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination.

3. A Notice of Hearing setting the hearing for June 19, 2019, at 10:00 a.m., at IRC was served on the parties by OAH on May 15, 2019.

4. On June 10, 2019, in accordance with applicable law, IRC sent claimant's mother a letter identifying witnesses it intended to call at the hearing and a copy of documentary evidence to be presented.

5. On June 13, 2019, claimant's mother filed a Motion to Continue the hearing on the grounds that 1) she is preparing for her "other son's" hearing scheduled for the following week, 2) her daughter was diagnosed with an eating disorder and needs constant monitoring, and 3) claimant has no school in July and August and she needs to care for him. On that same day, IRC opposed the continuance.

6. OAH attempted to contact claimant's mother numerous occasions to set up a telephonic hearing on claimant's motion. On June 18, 2019, claimant's motion was denied because claimant's mother failed to establish good cause for a continuance.

7. The matter was called for hearing at 1:27 p.m. on June 19, 2019. There was no appearance on claimant's behalf, and no good cause established for claimant's mother's failure to appear. IRC elected to proceed with the hearing by default.

EVIDENCE PRESENTED AT HEARING

8. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. 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 based on autism.

9. Sandra Brooks, Ph.D. is a licensed clinical psychologist. She obtained her doctorate in clinical psychology in 2006 from Loma Linda University. She also has a Bachelor of Arts in English and Psychology and a Master of Science in Experimental Psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Prior to that, she served as a psychological assistant at IRC from 2007 to 2009. Before joining IRC, she served in multiple positions across the country. She has been involved with many professional presentations in the field of psychology, and attended countless trainings and workshops in her field.

10. The records submitted by claimant included: a November 15, 2018, letter from a doctor at Loma Linda University Behavioral Medical Center; an August 29, 2018,

Individualized Education Program (IEP); and several psychoeducational assessments completed by claimant's school district. All records were reviewed and considered.

11. The following is a summary of the records and Dr. Brooks's testimony:

With respect to the letter from the doctor at Loma Linda University Behavioral Medical Center, there was no supporting data or assessments showing how the conclusion that claimant has autism was reached. Thus, the letter was of little value.

Claimant's IEP reflects that he receives special education services through his school district under the categories of autism and specific learning disability. When school districts conduct assessments for special education, they use different criteria than the DSM-5; it is much easier to qualify a person under the category of autism for special education because the district only need to make a determination that a child has "autistic like" features as opposed to all of the diagnostic criteria for a DSM-5 diagnosis of autism.

In February and March 2019, claimant's school district completed a psychoeducational assessment. However, the only measure that specifically looks at autism that the school district used was the Gilliam Autism Rating Scale – Third Edition (GARS). The GARS is a rating system completed by selected individuals familiar with claimant's behaviors. In this case, it was completed by claimant's mother and teachers, so it is subjective. The results of the screening showed claimant "very likely" has features of autism. However, the GARS is a screening tool only; it is not a standard test used to diagnose autism. Thus, the results do not equate with a DSM-5 diagnosis of autism.

On October 31, 2017, Dr. Brooks completed an assessment of claimant. She administered a battery of tests, including the Autism Diagnostic Observation Scale, Second Edition, Module 4 (ADOS) and the Childhood Autism Rating Scale, Second

Edition, High Functioning Version (CARS). On the CARS, claimant demonstrated minimal to no symptoms of autism. On the ADOS, while claimant's score was consistent with autism, Dr. Brooks opined that claimant's score was likely elevated because of his other diagnoses – which included Attention Deficit Hyperactivity Disorder (ADHD) and depression. Dr. Brooks also observed claimant to have a lot of anxiety during the assessment, and believed it could be attributable to social anxiety disorder. Thus, Dr. Brooks concluded that although claimant was above the cutoff for autism on the ADOS, his other diagnoses contributed to the outcome. During the assessment, Dr. Brooks also observed claimant's behaviors. Claimant did not display the most common features expected of an autistic person, such as sensory issues, repetitive or restricted interests, or poor eye contact. Finally, neither the records nor Dr. Brooks's assessment of claimant showed that claimant was substantially disabled in three or more major life activities appropriate for his age.

Accordingly, claimant did not meet the criteria for regional center services.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept.*

of Developmental Services (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. 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.

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 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.*)

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.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

EVALUATION

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

The only expert to testify was Dr. Brooks. Based on the records provided, Dr. Brooks's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism and is not substantially disabled within the meaning of applicable law. Although claimant meets the criteria for autistic-like features for purposes of special education, the Education Code criteria for qualification is not the same as the criteria under the Lanterman Act. During Dr. Brooks's assessment of claimant, he did not display the most common features expected of an autistic person, such as sensory issues, repetitive or restricted interests, or poor eye contact. Claimant displayed emotion and expressive and receptive facial gestures, such as a smile, when appropriate. On the CARS, claimant demonstrated minimal to no symptoms of autism. On the ADOS, while claimant's score was consistent with autism, claimant's score was likely elevated because of his other diagnoses of ADHD and depression, as well as possible social anxiety disorder.

Moreover, even assuming claimant did meet the diagnostic criteria under the DSM-5 for autism, nothing in the records provided established that claimant is substantially handicapped in three or more major life activities.

Accordingly, claimant is ineligible for regional center services.

ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services is denied.

DATE: June 21, 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 90 days.