

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020060328

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 13, 2020.¹

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20 and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in-place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

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

There was no appearance by or on behalf of claimant.

The record was closed and the matter submitted for decision on July 13, 2020.

ISSUE

Is claimant eligible for regional center services under the categories of autism spectrum disorder (autism) or intellectual disability pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Background

1. On April 30, 2020, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant, a 48-year-old man, that he was not eligible for regional center services.

2. On May 6, 2020, IRC sent claimant a Notice of Proposed Action stating that its eligibility team found that claimant did not have a "substantial disability" as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

3. On May 28, 2020, claimant's authorized representative filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, claimant contends he is eligible for regional center services under the categories of autism and/or intellectual disability.

4. Following an informal meeting held on June 11, 2020, between the parties, IRC adhered to its determination that claimant was not eligible for regional center services.

5. OAH served claimant's authorized representative with a Notice of Hearing dated June 10, 2020, identifying the date, time, and location of the hearing. On June 22, 2020, OAH served claimant's authorized representative with an Order Converting Hearing to Telephonic Hearing, providing a phone number and access code for calling into the hearing. The order confirmed the time and date of the hearing. IRC served claimant's authorized representatives with its hearing exhibits and list of witnesses on July 8, 2020, and provided the conference line phone number, passcode, and date/time of hearing. Notice of the hearing was therefore proper.

6. Neither claimant nor claimant's authorized representative requested a continuance or otherwise contacted OAH to advise that they would not be appearing for the hearing.

7. Given that there was not good cause to continue the hearing, the matter proceeded in claimant's absence.

Diagnostic Criteria for Autism

8. 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 to qualify for regional center services based on autism.

Intellectual Disability

9. The DSM-5 also identifies criteria for the diagnosis of intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65 to 75 range. The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers.

Evidence Presented at Hearing

10. Ruth Stacy, Psy.D., is a staff psychologist at IRC. 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 over 27 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 qualifies as an expert in the diagnoses of intellectual disability and autism, and in the determination of eligibility for IRC services. Dr. Stacy testified about the following records the IRC eligibility team reviewed before determining that claimant did not qualify for regional center services.

11. In March 2005, when claimant was 32 years old, he underwent an intellectual achievement evaluation performed by James Shortell, Ph.D. Dr. Shortell conducted an interview of claimant and his sister, who reported that claimant was born prematurely with oxygen deficiency. He was in special education for most of his school career. His sister was concerned about claimant's impulse control. He held a job as a cook for 10 years.

Dr. Shortell administered the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III) and the Wide Range Achievement Test – Revision Three (WRAT-3). On the WAIS-III, claimant registered a full scale IQ of 77, with a verbal IQ of 75 and Performance IQ of 83. The overall score was in the borderline range, but there was some variability in the subtest scores, with claimant scoring high in the areas of abstract thinking, symbol search, and block design. Dr. Stacy testified that none of the scores fell within the category of intellectual disability. On the WRAT-3, claimant scored in the third grade level for spelling, the fifth grade level for reading comprehension, and the third grade level for arithmetic.

Dr. Shortell concluded that claimant had significant intellectual and achievement deficits and would benefit from job training. He diagnosed claimant with obsessive compulsive disorder and borderline intellectual functioning. Dr. Stacy testified that long-term competitive employment as claimant had is inconsistent with someone with a disability.

12. A psychological assessment was conducted in July 2006. The evaluator, Richard Schuetz, Ph.D., conducted numerous psychological tests. He administered the WAIS-III, on which claimant had a full score IQ of 85, with verbal IQ of 73 and performance IQ of 104. Again, there was variability in the subtest scores. Although Dr. Schuetz indicated the possibility that claimant met the criteria for Asperger's syndrome, Dr. Stacy testified that the diagnostic criteria that Dr. Schuetz used was not the same criteria contained in the DSM-5. Dr. Stacy testified that claimant's history of obsessive compulsive disorder and anxiety disorder would influence the scores that indicated Asperger's Syndrome. Dr. Stacy noted the reference to Asperger's Syndrome first appeared when claimant was 33 years old.

13. Based on these documents, Dr. Stacy agreed with the multidisciplinary team's conclusion that claimant is not eligible for regional center services.

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.)

Relevant Law and Regulations

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman 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.

3. The Department of Developmental Services 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.)

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 retardation², 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

² 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.

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 intellectual disability, educational or psychosocial 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 intellectual disability.”

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. Upon an application for services, the regional center is charged with determining if an individual meets the definition of developmental disability contained in Welfare and Institutions Code section 4512. In this assessment, "the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. § Inst. Code, § 4643, subd. (b); Cal. Code Regs., tit. 17, § 54010.)

8. Welfare and Institutions Code section 4642 requires a regional center to perform "initial intake and assessment services" for "any person believed to have a developmental disability." Intake shall also include a decision to provide assessment but does not require an assessment. (*Id.* at subd. (a)(2).)

Evaluation

9. The only expert who testified was Dr. Stacy. Based on the records provided, Dr. Stacy's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for intellectual disability or autism. Moreover, nothing in any records showed claimant is substantially disabled within the meaning of applicable law. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category.

ORDER

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

DATE: July 27, 2020

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 90 days.