

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2020060876

DECISION

On August 20, 2020, Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference due to the ongoing corona virus public health emergency.

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

Claimant's sister represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 20, 2020.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the categories of autism spectrum disorder (autism), intellectual disability, or a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability (fifth category)?

FACTUAL FINDINGS

Background

1. Claimant is a 33-year-old male. On May 6, 2020, IRC sent claimant a Notice of Proposed Action stating that claimant did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by IRC did not show that claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.

2. On June 15, 2020, claimant's sister filed a Fair Hearing Request challenging IRC's eligibility determination on claimant's behalf. Following an informal meeting between the parties on July 15, 2020, IRC adhered to its determination. This hearing ensued.

Diagnostic Criteria for Autism

3. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. The 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. In addition, the disability must have originated before an individual reached 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

Diagnostic Criteria for Intellectual Disability

4. The DSM-5 states the diagnostic criteria used for intellectual disability. Three criteria must be met: deficits in intellectual function, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores in the 65 to 75 range. To qualify for regional center services, the disability must also have originated before an individual reached 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

Diagnostic Criteria for Fifth Category

5. Under the fifth category, the Lanterman Act provides assistance to individuals with a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability, but does not include other handicapping conditions that are "solely physical in nature." (Welfare

and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual reached 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to help regional centers determine whether a person qualifies for services under the fifth category. The ARCA Guidelines require evidence that the person functions in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

6. A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that any deficits in intelligence show stability over time.

Significant deficits in adaptive functioning are proved based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations

that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgment. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

7. In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes considering: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

Substantial Disability

8. California Code of Regulations, title 17, sections 54000 and 54001, which are also referenced in the ARCA Guidelines, define "developmental disability" and "substantial disability." To determine whether a diagnosis of a developmental disability

is substantially handicapping to qualify for regional center services, the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, or economic self-sufficiency.

Evidence Presented by IRC

9. Ruth Stacy, Psy.D., is a staff psychologist at Inland Regional Center. She obtained her doctor of psychology in 2008, and also holds a master of arts in counseling psychology, master of arts in sociology, and bachelor of arts in sociology and psychology. Dr. Stacy has served in a variety of positions, including Senior Consumer Services Coordinator and Senior Intake Counselor. She has been a staff psychologist at IRC since 2015. She 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. Stacy is an expert in the areas of autism, intellectual disability, fifth category, and in the evaluation of records to determine eligibility for regional center services under the Lanterman Act.

10. Dr. Stacy reviewed the following documents as part of her evaluation of claimant's eligibility: a psychoeducational evaluation from November, 1995 by claimant's school district; a psychoeducational evaluation from October, 1998 by the school district; a language and speech assessment report dated November, 1998 by the school district; a three-year evaluation from October, 2001 by the school district; a three-year evaluation from November, 2004 by the school district; an individualized education program (IEP) from November, 2004; a psychological evaluation by Medical Support Los Angeles, Inc. performed on behalf of the Department of Social Services in

November, 2008; a psychiatric evaluation from November, 2014 by Millennium Multispecialty Medical Group prepared for the Department of Social Services; an Independent Internal Medicine Evaluation by MSLA-Corona for the Department of Social Services in January, 2015; and a Psychological Testing Report from March, 2015 by the Department of Rehabilitation.

DR. STACY'S RECORD REVIEW

11. The records provided a picture of claimant's levels of function from age eight to age 27. At age eight, he showed a borderline range of intellectual function, which is above the range for intellectual disability. He was noted to be a cooperative student, eager to please, who got along well with peers, teachers, and aides. He demonstrated learning strengths in associative thinking and sequencing and learning difficulties in cognitive abilities, sensorimotor skills, oral expression, and memory. There was no evidence of adaptive function concerns. There was no evidence of autistic-like behaviors or medical conditions. He qualified for special education services due to a language disability.

12. At age 11, claimant's intellectual functioning was measured in the low average range. He showed learning difficulties in visual processing, auditory processing, and oral expression. He demonstrated appropriate social/emotional adjustment within the school setting. He qualified for special education services as a student with a specific learning disability. The records at this age did not demonstrate intellectual disability, autism, or any adaptive function deficits.

13. In sixth grade, claimant demonstrated expressive and receptive language skills at the eight to nine-year-old level, approximately a third-grader. His English language use and skills were commensurate with his present academic developmental

age. He was noted to be friendly, pleasant, cooperative, and interactive during the sessions. He did not qualify for special education in the area of speech/language. He continued to qualify for special education services with a specific learning disability. There was no evidence of autism, intellectual disability or problems with adaptive function.

14. In ninth grade, his cognitive function was measured in the low average range. He continued to qualify for special education services for specific learning disability. There was no evidence of autism, intellectual disability, or adaptive function difficulties.

15. In twelfth grade claimant continued to qualify for special education with a learning disability. There was no evidence of autism, intellectual disability, or adaptive function difficulties.

16. At age 17 he qualified for special education services with a learning disability. It was noted on his IEP that he was recommended for Job Corps. Dr. Stacy testified that students with intellectual disability are not good candidates for Job Corps. There was no evidence of autism and no adaptive function difficulties.

17. At age 21 claimant was evaluated at the request of the Department of Social Services. Intellectual functioning was measured at the borderline range. He was diagnosed with adjustment disorder with depression and irritability and a cognitive disorder with impairment in memory.

18. At age 27, claimant was again evaluated on behalf of the Department of Social Services. He was living with his mother and sister. He was able to eat, dress, and pay his expenses independently. He was able to do some household chores, errands, shopping, and cooking. He managed his own money. He did not drive. Dr. Stacy

testified that this information does not present evidence of a substantial disability. Dr. Stacy noted that cognitive testing showed some sub scores in the borderline and intellectual disability range, however his math score was average. That is inconsistent with intellectual disability. He was diagnosed with adjustment disorder with depression and irritability and cognitive disorder with impairment in memory.

19. Based upon this record review, Dr. Stacy concluded that claimant did not qualify for regional center services under the categories of autism, intellectual disability, epilepsy, cerebral palsy, or fifth category. The IRC interdisciplinary eligibility team met on April 30, 2020, reviewed the records, and agreed with this conclusion.

20. No evidence was presented that claimant qualifies for regional center services under the categories of cerebral palsy or epilepsy.

Claimant's Sister's Testimony

21. Claimant's sister testified that the family wants claimant to be as independent as possible. He recently started working at Amazon where he builds boxes and fills orders. He is doing "ok" in that job. He is taking classes at community college and receives accommodations for his language difficulties, as well as tutoring services. He takes the bus and can make change, but he lacks judgment about social situations and basic decisions. He needs a lot of assistance to complete a job application. He gets angry easily at home. Although school and medical professionals describe him as cooperative and eager to please, he is not that way at home. He has back problems and diabetes. He almost lost his feet because of ulcers associated with diabetes. He lost the eyesight in one eye because of diabetes. Although he can cook for himself, the family does not allow him to use the stove because he has forgotten to turn it off. His doctors insist that someone come with him to appointments. He never

learned to drive an automobile, but he can ride a bicycle. The family is Hispanic and values hard work. It takes a lot of repetition for him to retain information. His sister does not consider him independent; she considers him substantially disabled. Claimant's sister did not assert that he qualifies for regional center services under the categories of cerebral palsy or epilepsy.

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 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 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.)

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;

(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

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.

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.)

Conclusion

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Stacy. Her opinion, and the conclusion of the regional center's interdisciplinary team, was that claimant did not meet any of the eligibility criteria. The evidence provided supports that conclusion. Claimant does not meet the eligibility requirements for autism, intellectual disability, cerebral palsy, epilepsy, or fifth category.

9. With respect to autism, nowhere in any of the documents did it indicate there has been a suspicion of autism, nor were any of the following features of autism present: 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.

10. Moreover, nothing in any records showed claimant is substantially disabled in three or more areas of major life activity within the meaning of applicable law, or that he has substantial adaptive deficits that would render him eligible for regional center services under the fifth category. His intellectual ability places him above the cognitive level of functioning to be considered intellectually disabled. There was insufficient evidence to show claimant has a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability.

Accordingly, claimant is not eligible for regional center services.

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ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services is denied. The evidence did not establish claimant has a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

DATE: August 31, 2020

ALAN R. ALVORD

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.