

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020070437

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on August 25, 2020, pursuant to Executive Orders N-25-20, N-33-20, and N-63-20 pertaining to the COVID-19 pandemic.

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

Claimant's father represented claimant.

The record was closed and the matter submitted for decision on August 25, 2020.

ISSUE

Is claimant eligible for regional center services under the category of intellectual disability pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Background

1. On May 27, 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 14-year-old boy, that he was not eligible for regional center services.

2. On June 9, 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 July 7, 2020, claimant's father filed a Fair Hearing Request challenging IRC's eligibility determination.

4. Following an informal meeting held between the parties on August 10, 2020, IRC adhered to its determination that claimant was not eligible for regional center services.

Diagnostic Criteria for Intellectual Disability

5. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) 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 65-75 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

6. 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 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.

7. A psycho-educational report from claimant's school district was completed on December 16, 2019, when claimant was 14 years old, and in ninth grade. A summary of claimant's health history indicated that claimant was diagnosed with Dandy-Walker Syndrome (DWS), a congenital brain malformation. Dr. Stacy testified that DWS affects the cerebellum, which primarily affects motor function; although individuals with DWS can also be intellectually disabled.

Claimant began receiving special education services in first grade under the primary disability of Specific Learning Disability and secondary disability of Speech and Language Impairment. His most recent Individualized Educational Program indicated that Speech and Language Impairment had been replaced with Other Health Impairment. Claimant receives special education services in a self-contained classroom with a modified curriculum focused on functional life skills and community-based instruction.

The report reviewed previous psychological testing that had been conducted in 2014 and 2017. In 2014, claimant scored in the "average" range for sequential/short-term memory and the "low average" range for simultaneous/visual processing, sequencing, complex processing, and planning/fluid reasoning. In all other domains he scored in the "low" or "very low range." In 2017, the Order Comprehensive Test of Nonverbal Intelligence (CTONI) was administered, which Dr. Stacy explained is a standardized test that is a very good measure for a person's IQ. Claimant scored in the below average range for pictorial composite, the average range for geometric composite, and a full-scale IQ of 88, which is in the below average range. On the Woodcock Johnson – Third Edition Achievement Test, claimant scored in the low and

very low range. Dr. Stacy testified that the CTONI is a much stronger test for non-verbal intelligence and indicator for true cognitive skills. Dr. Stacy testified that claimant's scores were not indicative of someone with intellectual disability because it would not be expected for someone with intellectual disability to score in the average or low average range for any category. Moreover, claimant's scores on the CTONI indicate an overall IQ of 88, which is in the low average range.

In 2019, the school psychologist administered the Woodcock Johnson IV test of Cognitive Abilities (WJ-IV COG), Oral Language (WJ-IV-OL), and Achievement Form A (WJ-IV-ACHA), in addition to the Beery Developmental Test of Visual-Motor Integration, and the Vineland Adaptive Behavior Scales –Third Edition (Vineland-3). The Woodcock Johnson relate to academic achievement and showed scores within the low range for all of the oral language clusters. Claimant's overall academic achievement was in the very low range. However, claimant also had a "superior" score for the writing sample test; was within the average range for three clusters of written language, broad written language, and written expression; and was within the low average range for spelling and oral reading.

The WJ-IV-COG was used to assess claimant's cognitive and processing abilities. For general intellectual ability, claimant had a score of 44, which is in the very low range. Dr. Stacy testified that this score is within the range of moderate intellectual disability. However, it also reflected a drop in 38 IQ points from when claimant was administered the CTONI in 2017. This is a huge drop, and would only be expected in an individual who experiences health issues such as a traumatic brain injury or other pathology – neither of which happened to claimant during the two years between testing. DWS would not account for such a dramatic drop in scores over a two-year period. Moreover, an individual with intellectual disability would have consistently low

scores throughout the developmental period. While a person can score lower on tests than actually reflect true intellectual ability, it is not possible to score higher than one's true ability. Reasons a person may score lower on a test from one sitting to another include the effort given during the test.

Finally, claimant was evaluated using the Vineland-3, completed by claimant's special education teacher. This assessment tests three adaptive behavior domains: communication, daily living skills, and socialization. Claimant had a score of 67 for communication, in the low range; a score of 82 for daily living skills, in the moderately low range, and a score of 79 for socialization, in the moderately low range. Dr. Stacy testified that a person with intellectual disability would have more extreme adaptive deficits than exhibited by claimant.

Based on the testing, claimant met the special education eligibility criteria based on Intellectual Disability and Other Health Impairment. However, as noted by Dr. Stacy, eligibility criteria for regional center services are more stringent than for receiving special education services.

8. In conclusion, it was Dr. Stacy's opinion that claimant is not eligible for regional center services.

LEGAL CONCLUSIONS

Burden and Standard 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 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

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.

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. While it is clear that claimant has multiple challenges, including a diagnosis of DWS, DWS in itself does not qualify a person for regional center services. Based on the testing performed by claimant's school district, it was established that claimant's cognitive and adaptive abilities

exceed that of someone with an intellectual disability. 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: September 9, 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.