

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

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022090595

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on January 17, 2023.

Claimant's mother represented claimant.

Keri Neal, Fair Hearing Representative, represented Inland Regional Center (IRC).

The record was closed and the matter submitted on January 17, 2023.

SUMMARY

Claimant has not met his burden to show by a preponderance of the evidence that he qualifies for regional center services after giving due consideration to the evidence of record and the parties' arguments. His appeal is denied.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is 21 years old and is enrolled in Riverside Community College where he receives disability support services. He obtained a high school diploma. In high school, he received Special Education services for speech or language impairment. Claimant lives with his family.

2. Claimant applied for regional center services on a date not specified in the record. On August 9, 2022, IRC notified claimant that he is not eligible for regional center services because he does not have a "developmental disability" as defined under Welfare and Institutions Code section 4512. Claimant timely submitted a Fair Hearing Request on September 8, 2022. In his hearing request, claimant does not state the category under which he believes he is eligible for regional center services. He states only that he needs regional center services, and the supports and services regional center may offer. At the start of the hearing, claimant agreed he may qualify for services under the intellectual disability (ID) category, or under a disabling condition closely related to ID, or that requires treatment similar to that required for individuals with an ID ("The Fifth Category"). (Welf. & Instit. Code, §4512, subd. (a).)

Records IRC Obtained and Reviewed in Making Its Decision, and IRC's Eligibility Team Determination

3. To evaluate claimant's eligible for regional center services IRC obtained the following materials to evaluate whether claimant is eligible for regional center services:

- An Individualized Education Plan (IEP) dated September 12, 2019, from the Riverside Unified School District.
- An Amended IEP dated September 24, 2019.
- A psychological evaluation report by clinical psychologist Virginia Sullivan, Ph.D., dated April 19, 2022.
- Claimant's school records from Riverside Unified School District from 2013 to 2019 which IRC requested on or about November 2022.

4. IRC Determination/Eligibility Team (Team) reviewed these records and determined that claimant is not eligible for regional center services. The Team consisted first of Holly Miller-Sabouhi, Psy.D., a licensed clinical psychologist, Janessa James, M.D., a pediatrician, and Mary Bacon, IRC Program Manager/Director, as documented in a document titled Eligibility Determination/Team Review dated August 3, 2022. As documented in a second document titled Eligibility Determination/Team Review, which is dated December 12, 2022, the Team of Ruth Stacy, Psy.D., regional center staff psychologist, a physician, whose signature is not legible, and an IRC Program Manager/Director.

5. Both Teams reviewed the records to evaluate claimant's eligibility and determined that claimant is not eligible for regional center services because he does not have any qualifying developmental disability condition.

Testimony of Ruth Stacey, Psy.D.

6. IRC relies for its position on the opinion of Dr. Stacy, who testified in this hearing. As noted, Dr. Stacy is a staff psychologist at IRC. Dr. Stacy received her Doctor of Psychology (Psy.D.) degree from Trinity College of Graduate Studies in 2008. Her responsibilities at IRC include performing psychological assessments of children and adults to determine eligibility for regional center services.

7. Her testimony is summarized as follows:

8. Dr. Stacy reviewed the materials of record. Based on her review of the materials, Dr. Stacy stated claimant does not meet the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for ID. In addition, Dr. Stacy opined that claimant does not qualify for regional center services under the Fifth Category because he does not have a condition similar to ID, or that requires treatment similar to the treatment for ID.

9. Dr. Stacy reached her conclusions for these reasons:

10. Claimant has a learning disability, Speech or Language Impairment, and qualified for Special Education services due to this condition. This condition is not consistent with an ID diagnosis. His performance on the Kaufman Brief Intelligence Test Second Edition (KBIT 2) assessment, which Dr. Sullivan administered to him on April 19, 2022, confirms that claimant has a learning disability impairment that has impacted his verbal cognition. The KBIT 2 is a brief measure of verbal and non-verbal

intelligence. His assessed Nonverbal IQ score of 80 on the KBIT 2 is in the low average range and reflective of his cognitive abilities. An average score is 85 on this test. While claimant's Verbal IQ score was 60 and in the extreme lower range, Dr. Stacy said she was not surprised to see the 60 score due to claimant's speech problems and is not reflective of his cognitive ability. She said his Full Scale IQ of 66 was also not reflective of his cognitive ability due to the significant discrepancy in these scores.

11. Dr. Stacy considered claimant's performance on assessments documented in a Psychoeducational Evaluation Report dated September 14, 2018, which was done for the Riverside School District. The evaluator considered whether claimant met the criteria for ID and did not reach the conclusion that he did. Dr. Stacy found that the results of these assessment are also not consistent with an ID diagnosis and further evidence that claimant does not meet the DSM-5 criteria for ID. She noted that claimant's performance on the assessments contained significant variances in his skills ranging from extremely low, to below average, to average, and as such are again similar to a learning disability as opposed to an ID. As an indication of this claimant performed lower on verbal-based tests administered during this evaluation than in the non-verbal tests. Dr. Stacy stressed he performed in the average range in the non-verbal tests.

12. Dr. Stacy added that the Psychoeducation Report documents claimant met all developmental milestones, which she considered to be additional evidence that claimant does not meet the criteria for ID.

13. In her analysis concerning whether claimant meets the ID criteria, based on her review of the records as a whole, Dr. Stacy further found it significant that the records, including Dr. Sullivan's report and the IEP and Amended IEP, do not reflect a concern that claimant has an ID. Dr. Stacy added that the records also do not reflect a

concern that claimant has behaviors consistent with Autism Spectrum Disorder (ASD). Claimant did not identify, it is noted, ASD as a possible eligibility category.

14. Regarding claimant's adaptive functioning capabilities, Dr. Stacy found that the record indicates that claimant does not have significant functional deficits that would meet the criteria for ID or for regional center services. She cited the 2018 Psychoeducational Evaluation Report in which claimant's adaptive functioning in 2015 was measured in the low to average range. Dr. Stacy found it significant that no adaptive testing was done in 2018 indicating that claimant's adaptive functioning was not an area of concern. She also found it further significant that claimant's IEP and Dr. Sullivan's report do not indicate claimant has adaptive functioning deficits.

15. Dr. Stacy commented that claimant obtained a high school diploma, and graduating with a high school diploma was not typical for a person with ID. In high school, claimant, she added, participated in a number of college prep classes which is also not typical for a person with ID.

16. With regard to claimant's eligibility under the Fifth Category, Dr. Stacy testified that the records do not support the conclusion that claimant has a disabling condition that is closely related to ID or that requires treatment similar to that required for individuals with an ID.

Claimant's Argument

17. Claimant's mother did not testify but offered the following argument: She wants help for her son. She acknowledged he is attending Riverside Community College but she noted he gets help there through disability services. She feels claimant is being overlooked. She said there are a lot of things going on with him mentally and

mental health she said is important. He is receiving therapy now and has been participating in an IEP since he was in elementary school.

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 of proof is a preponderance of the evidence. (Evid. Code, § 115.) Claimant has the burden of proof to establish his eligibility in this matter.

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

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 follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, 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. (Note: The regulations still use the term "mental retardation," instead of the term "Intellectual Disability.")

(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 become seriously impaired as an integral manifestation of the disorder

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.

Evaluation and Disposition

7. Claimant's appeal is denied. Claimant did not prove by a preponderance of the evidence that he qualifies for regional center services under the ID category, or under the Fifth Category. Dr. Stacy testified persuasively that claimant does not meet the DSM-5 criteria for ID, and he does not have a condition closely related to ID or that requires treatment similar to that required for individuals with an ID. Dr. Stacy supported her opinions with detailed citations to the evidence of record.

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ORDER

Claimant's appeal is denied. Claimant is ineligible for regional center services under the Lanterman Act. IRC's determination that he is ineligible is affirmed.

DATE: January 25, 2023

ABRAHAM M. LEVY

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.

