

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016120321

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 25, 2017.

Claimant's mother represented claimant, who was not present at the hearing.

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

The matter was submitted on January 25, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act pursuant to a diagnosis of Autism Spectrum Disorder?

FACTUAL FINDINGS

JURISDICTION AND CLAIMANT'S FAIR HEARING REQUEST

1. On November 17, 2016, claimant requested a fair hearing to contest IRC's Notice of Proposed Action dated October 5, 2016. In its action IRC determined that

claimant was not eligible for regional center services. Claimant disagreed with IRC's proposed action and the matter proceeded to hearing.

IRC'S STIPULATION

2. After the record was opened, IRC's exhibits were admitted and IRC's witness, Michelle Lindholm, Ph.D. testified, IRC reassessed its decision that claimant was not eligible for regional center services based on evidence offered by claimant's mother at the hearing and after consulting with Dr. Lindholm.

Based on its reassessment, IRC agreed to qualify claimant under the Autism Spectrum Disorder category with substantial handicaps in the areas of self-care, self-direction and capacity for independent living. IRC's stipulation was made with the understanding, based on Dr. Lindholm's recommendation, that it will reassess claimant's eligibility for ongoing regional center services after three years. Claimant's mother accepted IRC's stipulation.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not the previous determination that an individual has a developmental disability was erroneous, the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

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 provides:

[a]n 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 which originates before an individual attains age 18, 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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. Welfare and Institutions Code section 4643.5, subdivision (b), states:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

6. 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.
 - (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.
 - (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.

7. 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.

ORDER

Claimant's appeal from the Inland Regional Center's determination that he is not eligible for regional center services and supports is granted. Claimant is eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act. Claimant's eligibility for ongoing regional center services and supports will be reassessed after three years.

DATED: January 26, 2017

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 ninety days.