

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2012010003

M.K.

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Bernardino, California on June 26, 2012.

The Inland Regional Center (IRC or agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his grandmother.

Oral and documentary evidence was received and the matter was submitted on June 26, 2012.

ISSUE

Should claimant's eligibility be terminated?

FACTUAL FINDINGS

1. Claimant, who is nine years old, was originally assessed for IRC services by Medical Consultant E.N. Elmendorf, M.D. on March 23, 2006. Dr. Elmendorf found claimant eligible for services under the eligibility category of cerebral palsy with "deficits/disabilities

due to this condition in the areas of communication, self-care, capacity for independence, and economic self-sufficiency." Dr. Elmendorf recommended "Re-evaluate in two years." (IRC¹ 11)

2. Claimant was re-examined on September 9, 2009 by the County of San Bernardino, Department of Public Health, California Children Services. The Orthopedic examination was conducted by Mary E. Hurley, M.D. Dr. Hurley confirmed Dr. Elmendorf's March 23, 2006 diagnosis of "Cerebral palsy." Additionally, Dr. Hurley diagnosed "Diplegia" and made the following recommendation to claimant's guardian (claimant's grandmother):

A discussion is held with his guardian with regard to the in-toeing, which is due to the mild diplegic cerebral palsy. Derotation surgery could be performed, but I do not feel it is severe enough to warrant such extensive surgery as this. With regard to his increased tip-toeing, I believe he needs to be placed back in the AFOs [Ankle and Foot Orthotics]. After discussing this with the guardian and the patient, they are willing to try this again. The patient will be referred back to Johnson's Orthopedics. From an orthopedic standpoint, he is stable with mild diplegic cerebral palsy. His neurologic problems appear to be more of a problem than his mild diplegia. (IRC 14)

Claimant began receiving physical therapy as a result of the evaluation(s).

3. On October 18, 2011, claimant underwent another IRC medical evaluation.

¹ "IRC" refers to the service agency's exhibits.

The evaluation was conducted by IRC medical consultant, Dr. Mary Lam. In the resulting report, Dr. Lam noted the following: "possible cerebral palsy & mental retardation. He is here for reevaluation to review eligibility regarding cerebral palsy. He was last seen here in 2006 by Dr. Elmendorf who recommended review of eligibility in 2 yrs." (IRC 10) Dr. Lam's medical impressions were: "1. Cerebral Palsy; 2. Prematurity at 27 wks; 3. Overweight; 4. Behavior Concerns." (IRC 10) Dr. Lam then checked the eligibility statement indicating that claimant "Does not satisfy medical criteria for eligibility for Regional Center Services." (IRC 10)

4. Dr. Lam testified during the instant hearing. Her testimony is paraphrased as follows: She reviewed claimant's file, including Neurologist report(s). Dr. Lam found that claimant has a history of cerebral palsy and was deemed eligible for IRC services in 2006. The 2006 evaluator recommended a re-evaluation in two years; however, claimant was not re-evaluated until this 2011 re-evaluation, five years after the 2006 evaluation. Dr. Lam concluded that claimant's cerebral palsy condition has "improved" and claimant is not substantially handicapped in three areas; therefore, he no longer qualifies for IRC services.

5. Claimant's grandmother, his guardian, also testified during the hearing. She testified that claimant's current condition is not substantially different from his condition in 2006. Claimant needs monitoring and supervision at all times. He can not care for himself at all. Grandmother or other care providers must either help claimant fulfill his self care needs or perform self care tasks for him. Claimant has extremely limited mobility even when he is wearing his AFOs. For example, when claimant goes into the community he has a special stroller that grandmother places him in and pushes once claimant's legs give out (start hurting). Claimant falls frequently while trying to walk. When he falls while in a public place he gets embarrassed. He bumps into people and has knocked down store shelves. After some of his falls claimant has had to be taken to the emergency room for treatment.

Grandmother also expressed concerns about the thoroughness of the 2011 re-

evaluation conducted by Dr. Lam. According to Grandmother, the complete examination took only about one hour and most of the time Dr. Lam was in a separate room from claimant, reading reports. Dr. Lam spent very little time visually assessing claimant's current status. It seemed to grandmother that Dr. Lam had already made her mind up about claimant before she even saw him. Dr. Lam was very abrupt and did not fully discuss claimant's current needs with grandmother. Dr. Lam was focused on what limited things claimant could do, rather than what he could not do.

6. Angel Smith, claimant's respite worker, testified that claimant does not feel pain, he wears "pull-up" diapers at night, he needs help getting dressed (he can't move his legs to get his pants on), if he tries to wipe himself after bathrooming he "gets it all over the place," claimant "gets physical" with others, he gets stressed out in groups (noise bothers him), if he gets stressed out he will try to hide under a table or he gets physical (biting, punching, etc.), claimant's "triggers" are unpredictable—for example, if you move a toy claimant may have a major "melt down," claimant weighs 150 pounds and has "taken his grandmother down to the floor" during one of his violent melt downs, claimant can not walk in a straight line and his walking ability/stamina is very limited, getting claimant in and out of cars is very difficult, although claimant can hold a conversation with children he will only do so "on his own terms"—he can not follow a conversation, he tends to ramble, he has no safety awareness and if not closely monitored he will wander off.

7. Grandmother's and Smith's testimony were consistent with the documentary evidence. For example the Client Development Evaluation Report (CDER), dated April 4, 2012 noted claimant's skill development as follows: "uses fingers of both hands to manipulate objects; walks alone at least twenty (20) feet with good balance; sits in manual or motorized wheelchair, but cannot move it; requires assistance to take medication; eats with at least one utensil, with spillage; toilets without prompting, but needs assistance; wetting and/or soiling occur at least once a week at night; performs personal care activities, but needs assistance; dresses self, but needs assistance; requires someone

nearby during waking hours to prevent injury/harm in all settings; focuses on a preferred task or activity for more than 30 minutes, uses sentences of three words or more and has a vocabulary of more than 30 words, initiates and maintains interactions in familiar and unfamiliar situations/settings; disruptive behavior interferes with social participation almost every day, the consumer has not caused injury within the past 12 months, but physical aggression occurs once a month or more; running/wandering away occurs or is attempted almost every day; outbursts occur at least once a week and usually require intervention.”

(IRC 6)

Claimant’s Quarterly Report, dated January 30, 2012 reveals that “running or wandering away occurs or is attempted almost every day. [Claimant] will wander away in public places if not supervised at all times and will wander away from the house if left unsupervised outside. Emotional outbursts occur eight times a week where [claimant] will hit, kick, throw objects, bite scratch, flip tables in the home, yell and scream. Grandmother reports that on most occasions when [claimant] has emotional outbursts, she has to restrain him so that he does not hurt himself or others. . .” (IRC 7)

8. On December 16, 2011, IRC notified claimant that he no longer qualified for services because he is no longer “substantially disabled as a result of Cerebral Palsy.” (IRC 1)

9. Claimant timely appealed from IRC’s determination that he no longer qualified for services and the instant hearing ensued.

LEGAL CONCLUSIONS

1. In order to qualify for services Welfare and Institutions Code section 4500, et seq. requires that a claimant suffer from a developmental disability. Welfare and Institutions Code section 4512, subdivision (a) defines “developmental disability” as follows:

. . . a disability that originates before an individual attains age 18 years, 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 individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. In addition to having a developmental disability, the developmental disability must be substantially disabling in order to qualify for services. Welfare and Institutions Code section 4512, subdivision (1)(a) defines “substantial disability” as follows:

. . . [T]he existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.

(7) Economic self-sufficiency.

3. As set forth in Finding 1, on March 23, 2006 Dr. Elmendorf found claimant eligible for services under the eligibility category of cerebral palsy with "deficits/disabilities due to this condition in the areas of communication, self-care, capacity for independence, and economic self-sufficiency." The evidence reveals that there have been no significant changes. Claimant still suffers from cerebral palsy and still has significant deficits/disabilities due to cerebral palsy in the areas of communication, self-care, capacity for independence and economic self-sufficiency. To suggest otherwise, in view of claimant's limited communication skills, limited ambulatory skills, behavioral outbursts, eloping, safety unawareness, inability to dress himself or to independently toilet and care for his self needs, would be risible.

4. California Welfare and Institutions Code section 4643.5, subdivision (b) provides: "An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from the regional center unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." In the present instance, the reassessment conducted by Dr. Lam was not "comprehensive" within the meaning of Welfare and Institutions Code section 4643.5, subdivision (b); not only that, the evidence establishes that there is not significant change in claimant's condition from his 2006 qualifying condition. Consequently, the evidence, considered as a whole, revealed that the original determination that claimant has a developmental disability was correct and not "clearly erroneous."

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal is granted. The agency's determination that claimant's services should be terminated due to lack of eligibility is reversed.

DATED: July 10, 2012.

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.