

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2013110043

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on February 27, 2014.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant, who was present during the hearing, was represented by his mother.

The matter was submitted on February 27, 2014.

ISSUE

Is claimant eligible for agency services under the diagnosis of Autism?

FACTUAL FINDINGS

1. Claimant is 19 years old.
2. Claimant applied for agency services.
3. On August 14, 2013, the agency conducted a psychological assessment of claimant to determine if he qualified for services. IRC Staff Psychologist Sandra Brooks, Ph.D. reviewed claimant's records, including previous psychological evaluations; observed claimant; interviewed claimant's mother; and administered the Vineland Adaptive Behavior Scale- 2nd

Edition, the Childhood Autism Rating Scale - 2nd Edition, and the Autism Diagnostic Observation Schedule (ADOS) – 2nd Edition, Module 4.

4. As a result of the August 14, 2013, evaluation, Dr. Brooks authored a report, in which she summarized her findings as follows:

While [claimant] has a history of having exhibited a number of autistic-like behaviors in the past, (this is reflected in [claimant's] score on the Childhood Autism Rating Scale, Second Edition), [claimant's] behavioral presentation during today's evaluation was not consistent with a diagnosis of Autistic Disorder, or of autism spectrum disorder. The diagnosis of Autism Spectrum disorder requires that the individual demonstrate all of the following symptoms:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:

1. Deficits in social –emotional reciprocity; ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction.
2. Deficits in nonverbal communicative behaviors used for social interactions; ranging from poorly integrated- verbal and nonverbal communication, through abnormalities in eye contact and body-language or deficits in understanding and use of nonverbal communication, to total lack of facial expression or gestures.
3. Deficits in developing and maintaining relationships, appropriate to developmental level (beyond those with caregivers); ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play and in making friends to an apparent absence of interest in people.

Based on the evaluator's observations of [claimant] during his IRC evaluation, [claimant] does not demonstrate significant deficits in social-emotional reciprocity (Criteria (sic) A.1). As mentioned previously, [claimant] is able to have a back and forth conversation, is very interested in having other people's attention. Neither does [claimant] demonstrate a variety of facial expressions, and to demonstrate (sic) a nice social smile. [Claimant] also demonstrated appropriate understanding and use of gestures. This is reflected in [claimant's] scores on the ADOS-

2 which are in the non-spectrum range. . . . (Exh. 6, emphasis in original)

5. Dr. Books testified in conformity with her August 14, 2013, evaluation findings and conclusions.

6. Mother testified that references in past records seemed to support her assertion that claimant has Autism. Those records are summarized as follows:

a) On September 7, 2004, licensed psychologist/neuropsychologist Judith DeGrazia Willard, Ph.D., made the following Diagnoses: “Traumatic Brain Injury; Intelligence (mildly intellectually deficient); Auditory Processing Disorder; Visual attention (severely impaired); Auditory attention (severely impaired); Simple motor speed (moderate to severely impaired); gross motor strength (moderate to severely impaired); Handwriting (impaired); Sensory-perceptual skills (moderate to severely impaired); Nonverbal processing (moderate to severely impaired); Rhythmic concentration (severely impaired); Tactual performance (moderate to severely impaired); Dysnomia; Speech Delay; Auditory verbal dysgnosia; Constructional dyspraxia; Spelling dyspraxia; Dyslexia; Right-left confusion; Central Dysarthria; Dyscalculia; Number-letter reversal (severely impaired); Perseverations (severely impaired); Receptive language (mildly impaired); Expressive language (moderately impaired); Verbal memory (moderately impaired); Visual memory (severely impaired); Hyperactivity (clinically significant); Aggression (at-risk); Conduct problems (at-risk); Anxiety (at-risk); Depression (at-risk); Atypicality (clinically significant); Withdrawal (at-risk); Adaptability (clinically significant); Social Skills (at-risk); Locus of control (clinically significant); Social stress (at-risk); Sense of inadequacy (at-risk); Interpersonal relations (at-risk); **Autism**; Bipolar Disorder; Communication skills-low; Daily living skills-low; Socialization-low.” (Exh. 13, emphasis added)

b) On May 4, 2009, Copper Hills Youth Center conducted a psychiatric evaluation of claimant. Based on the evaluation, the Copper Hills report listed the following relevant Admitting Diagnoses:

AXIS I: Bipolar I Disorder Mixed, Severe, Without Psychotic
Features
Pervasive Developmental Disorder/Autism Provisional
Posttraumatic Stress Disorder

AXIS II: Deferred

AXIS III: Asthma
Acne
History of Traumatic Brain Injury with Speech
Impediment . . . (Exh. 11, italics added)

c) In a March 6, 2009, Copper Hills report, “High Functioning Autism” was one of the impressions listed in the “Diagnostic Impression” section. (Exh. 10)

Based on these records, mother believes claimant qualifies for Regional Center services based on Autism, and she would like him to be found eligible for services.

7. Dr. Books was present for mother's testimony. In response, Dr. Brooks testified that the past "diagnoses" were not conclusive; rather, they were "provisional" diagnoses. Provisional diagnoses are really suspicions that a condition exists and subsequent testing should focus on "ruling out" such suspected diagnoses. None of the past assessments used the current, "gold-standard," the ADOS, for diagnosing Autism. Dr. Brooks did assess claimant using the ADOS; therefore, her conclusion that claimant does not have Autism is accepted over the provisional diagnoses of Autism from Copper Hills and the unsupported, non-ADOS, diagnosis of Autism by Judith DeGrazia Willard, Ph.D.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a "Developmental Disability" as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely...." California Code of Regulations, title 17, section 54000, further defines "Developmental Disability" as follows:

(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.

2. 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.

3. The facts, considered as a whole, reveal that claimant does not have Autism. The burden rests on claimant to establish that he suffers from a qualifying, “substantial,” “Developmental Disability” and, in this case, claimant failed to establish his eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

ORDER

The agency’s conclusion that claimant is not eligible for agency services is affirmed.

DATED: March 13, 2014.

_____/s/_____
ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

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.