

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. 2014050621

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on November 17, 2014.

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

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

The matter was submitted on November 17, 2014.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of intellectual disability?¹

¹ The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5) uses the term Intellectual Disability or Intellectual Developmental Disorder in place of the formerly used term, "Mental Retardation." The two terms are used interchangeably in this decision as both terms are contained in regional center documents.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 1, 2014, IRC notified claimant that she was not eligible for regional center services.
2. On June 22, 2014, claimant's aunt filed a fair hearing request appealing that decision and this hearing ensued.

Diagnostic Criteria for Intellectual Disability

3. The *DSM-5* contains the diagnostic criteria used to define intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. An individual must have a *DSM-5* diagnosis of intellectual disability to qualify for regional center services. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have scores in the 65-75 range.

Evidence Presented At Hearing

4. Claimant is a six-year-old female. She asserted she was eligible for services on the basis of intellectual disability. Claimant requested that she be re-evaluated for a determination of eligibility.

5. Claimant's September 8, 2014, Individualized Education Program (IEP) noted that she qualified for special education services on the primary basis of intellectual disability and the secondary basis of speech and language impairment. The school psychologist noted that claimant previously qualified for services based upon a primary disability of health impairment but now qualified based upon intellectual disability due to her intellectual functioning, adaptive behavior and academic achievement. Claimant's special education teacher reported that on the Brigance Comprehensive Inventory of Basic Skills II, claimant scored in the Severe Deficit Range on general knowledge, reading, math, and graphomotor and writing skills. Claimant scored in the Far Below Average Range on phonemic awareness and gross motor skills. The records noted speech and language difficulties and that claimant was making slow progress on her goals.

6. Claimant's September 8, 2014, Psycho-Educational Report noted that claimant was referred for an evaluation because her special education teacher had numerous concerns. Her mother always received special education services. On adaptive testing claimant had difficulties in communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction and social skills. Both claimant and her mother were noted to have microcephaly, a neurological condition in which the head is significantly smaller when compared to same age/sex peers, often causing developmental issues. Testing demonstrated significant language delays and issues.

Claimant's Cognitive test scores were recorded as follows:

Crystallized Knowledge (verbal ability): 57, Extremely Below Average;
Fluid Reasoning (non-verbal ability): 82, Below Average;
Auditory Processing: 65, Extremely Below Average;
Short and Long term memory scores were both 54, Extremely Below Average;
Visual Processing: 42, Extremely Below Average; and
Processing speed: 48, Extremely Below Average.

The school psychologist averaged all of these scores to obtain an "average ability score across all domains" of 56, a score that was Extremely Below Average. As a result of all the testing, claimant qualified for special education services under the category of intellectual disability which is defined as, "Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance." (34 CFR section 300.8 (c)(6)). This definition is similar to how the *DSM-5* defines intellectual disability.

7. Claimant's February 12, 2014, IEP contained a report from an orthopedic evaluator who noted that claimant suffered from a congenital anomaly known as microcephaly and from developmental delay. The orthopedic evaluator determined that claimant qualified for special education services.

8. A December 20, 2013, psychoeducational report noted that claimant's cognitive verbal test scores fell in the lower extreme range and the non-verbal scores were in the below average range. Claimant's language development was weak in both the receptive and expressive areas. Her inappropriate behavior was attributed to the lack of necessary language skills to express her wants and needs. Although she was six years old, claimant's language skills fell within the one to two year old range.

9. Laura Gutierrez, Psy.D., IRC Staff Psychologist, testified about her review of claimant's records and her assessment of claimant. Dr. Gutierrez acknowledged that she did not assess claimant's verbal skills because of the documented delays in that area. Dr. Gutierrez admitted that the school psychologist's evaluation was much more comprehensive than the one she performed. Dr. Gutierrez testified that she disagreed with the school psychologist's conclusion that claimant's overall cognitive score was 56. As Dr. Gutierrez explained, the school psychologist averaged all the scores, something that should not be done because the scores varied so greatly. Dr. Gutierrez testified that averaging the scores skews the results because it overestimates some skills and underestimates others. Here claimant's scores varied 25 points and Dr. Gutierrez testified that when scores vary more than 12-15 points, they should not be averaged. Dr. Gutierrez concluded that nothing in any of claimant's records demonstrated that claimant should be diagnosed with intellectual disability. Based upon her evaluation, Dr. Gutierrez concluded that claimant did not qualify for regional center services.

10. Claimant's aunt testified that claimant's test scores demonstrated an overall score of 56, sufficient to render her intellectually disabled. She explained that claimant's mother is a client of IRC based upon a diagnosis of intellectual disability and that the family believes claimant suffers from that diagnosis, as well.

LEGAL CONCLUSIONS

Burden 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.)

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 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. 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; and

(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.

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

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services.

Dr. Gutierrez made a credible witness. Her testimony demonstrated she had thoroughly reviewed the records and was familiar with the results listed therein. However, all but one of claimant's test scores was in the Extremely Below Average range and although Dr. Gutierrez explained that many scores were on "processing speed tests," the fact remained that they were all scores in the intellectual disability range. Moreover, claimant's adaptive functioning scores and behavioral reports all noted that she functioned at an extremely low level. She was doing poorly in school and at home, and her educational records demonstrated she had an intellectual disability, as well as a medical condition that explained it, microcephaly. While Dr. Gutierrez's testimony regarding averaging the scores was valid, all but one score was in the Extremely Below Average range and this decision is not based on the school psychologist's opinion regarding the average overall score of 56. Instead, the overwhelming evidence demonstrated that claimant qualified for regional center services based upon a diagnosis of intellectual disability.

Moreover, although Dr. Gutierrez explained that another basis for her opinion was the fact that claimant's scores were not listed as "Deficient," a term used to indicate scores in the Intellectual Disability range, the fact that the scores in the 42-57 range were noted to be "Extremely Below Average" strongly suggested that that term was synonymous with "Deficient." Further, given that claimant scored so poorly on her adaptive tests, had all but one of her cognitive scores in the 42-57 range, and had so many developmental issues noted in her records, a preponderance of the evidence demonstrated that claimant did have intellectual disability. While Dr. Gutierrez explained that if claimant truly had an intellectual disability, she would not have scored an 82 on the Fluid Reasoning test; there were just too many other overwhelmingly low scores and adaptive factors that could not be overlooked.

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ORDER

Claimant's appeal from the Inland Regional Center's determination that she 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 based upon a diagnosis of Intellectual Disability.

DATED: December 1, 2014

_____/s/_____
MARY AGNES MATYSZEWSKI
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.