

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014090260

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 23, 2014, in San Bernardino, California.

Leigh-Ann Pierce, Consumer Services Representative, represented Inland Regional Center (IRC).

Claimant's mother and authorized representative represented claimant, who was present during the hearing.

The matter was submitted on October 23, 2014.

ISSUES

Is claimant eligible for regional center services on the basis of a diagnosis of mental retardation or autism?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 26-year-old non-conserved young man who lives with his parents and four siblings. He graduated from high school with a diploma in 2006.
2. Claimant seeks regional center services due to mental retardation and autism.

3. By letter dated August 13, 2014, IRC advised claimant that it reviewed his records and determined that “no ‘intake’ services can be provided at this time, because the records did not show that you have a disability that qualifies you to receive IRC services.”

On September 2, 2014, claimant signed a Fair Hearing Request to appeal IRC’s decision. In the hearing request he stated that he disagreed with IRC’s decision.

Claimant’s School Records

CLAIMANT’S IEPS

4. Claimant received special education services in high school. Individualized Educational Programs (IEP)s from 2003 through 2006 were admitted as evidence. These IEPs state that claimant was eligible for special education services based on a specific learning disability in the area of expressive and receptive written language. No other disability was recorded.

5. Claimant’s performance levels were documented as follows: his reading level in the 9th through 11th grades was at the 1st to 2nd grade levels. Claimant worked at the 5th and 6th grade levels in math when he was in the 9th through 11th grades. His community participation was described as age appropriate; his career/vocational performance was described as age-appropriate; he followed class and school rules satisfactorily; his daily living skills were described as age-appropriate; his fine and gross motor skills were age-appropriate; and his social/emotional performance level was described as within normal age limits.

PSYCHOLOGICAL REPORT DATED FEBRUARY 2, 1996

6. Paula Dotseth, MA, NCSP, School Psychologist with the Hemet Unified School District, evaluated claimant on January 30, 1996. Ms. Dotseth noted that claimant and his family moved from Mexico to the United States in 1995 when he was seven years old. Before 1995 he did not attend school. His mother was concerned that claimant did not follow simple instructions in Spanish or English; that he did not communicate in school; that he had aggressive behavior; and that he did not recognize the alphabet.

Ms. Dotseth administered a series of tests to claimant: the IPT Language Test; the Kaufman Assessment Battery for Children; the Woodcock-Johnson Tests of Achievement; the Woodcock-Munoz Language Survey; the Bracken Basic Concept Scale; and the Developmental Test of Visual-Motor Integration.

Ms. Dotseth found that the assessment scores showed a severe discrepancy between claimant’s measured general ability and his achievement. She identified a psychological processing problem in the area of expressive language.

PSYCHOLOGICAL REPORT DATED FEBRUARY 26, 1999

7. Ms. Dotseth evaluated claimant again on January 25, 1999 for the Hemet Unified School District. Ms. Dotseth administered a number of tests. Claimant's Test Composite IQ score on the Stanford-Binet IV was 92, which is at the 31st percentile with Verbal Reasoning at 86; his Quantitative Reasoning was 92; his Abstract/Visual Reasoning was 100; and his Short Term Memory was 85. Claimant's achievement assessment scores, according to the Woodcock-Johnson Tests of Achievement, were in the very low range with percentile ranges at the 1st percentile. Claimant's perceptual skills, according to the Beery-Buktenica Developmental Test of Visual-Motor Integration, were measured as below-average, with a standardized score of 77, which is at the 6th percentile rank.

Claimant's adaptive behavior, as measured according to the AAMD Adaptive Behavior Scale, suggested to Ms. Dotseth that claimant's school related behaviors were average, except in the area of claimant's language development.

PSYCHOLOGICAL REPORT BASED ON FEBRUARY 9, 2000, TEST

8. Darleana McHenry, Ed.D., School Psychologist with the Hemet Unified School District, evaluated claimant on February 9, 2000. Dr. McHenry administered a number of tests to claimant: The Test of Nonverbal Intelligence (TONI); Woodcock Johnson Psychological Educational Battery; Berry's Developmental Test of Visual Motor Integration; Peabody Picture Vocabulary Test; Teacher Interview; and School Social Behavior Skills.

Based on claimant's scores on these assessment tests, Dr. McHenry found that claimant functioned overall in the average range. Dr. McHenry identified an attention processing disorder; she noted a significant discrepancy between claimant's achievement and his ability in the areas of Basic Reading, Written Expression, and Math Calculation.

PSYCHOLOGICAL REPORT DATED MAY 1, 2002

9. Lori Ruziska, Ed.S., School Psychologist, with the Hemet Unified School District, evaluated claimant on May 1, 2002. Ms. Ruziska administered a number of tests and procedures to claimant: The Woodcock Johnson Achievement Test (WJ-III); Cognitive Assessment System (CAS); TONI; and the Bender-Gestalt.

As measured on the WJ-III, claimant's Broad Reading scores fell within the very low range, with a standardized score of 47, which is at the 1st percentile rank. The Broad Reading is a broad measure of reading ability based on letter and word identification and comprehension of brief passages. Claimant's Broad Math score fell within the very low range, with a standardized score of 53, which is below the 1st percentile rank. Claimant's Broad Written Language score fell within the very low range, with a standardized score below the 1st percentile rank. Claimant performed within the very low range in the CAS for planning processing as demonstrated by a standardized score of 68. This score, according to

Ms. Ruziska, reflects very low ability in making decisions about how to complete a task, self-control, and ability to monitor the effectiveness of one's actions.

The TONI assessed claimant with a standardized score of 94, which is at the 14th percentile rank. According to the Bender Assessment, claimant obtained a standardized score of 94. The Bender assesses a child's developmental ability in visual-motor perception.

Ms. Ruziska did not make a specific assessment of claimant's psychological functioning. She stated that she would discuss these test results with claimant's IEP team.

PSYCHOLOGICAL EVALUATION FOR DEPARTMENT OF
REHABILITATION DATED APRIL 29, 2014

10. The California Department of Rehabilitation referred claimant to psychologist Harrell Reznick, Ph.D. Dr. Reznick evaluated claimant on April 29, 2014. Dr. Reznick diagnosed claimant with Autistic Disorder and Mild Mental Retardation.

Dr. Reznick based his diagnoses on information he obtained from claimant's mother, a mental status examination of claimant, and the results of the Wechsler Adult Intelligence Scale and Memory tests he performed. He did not have access to claimant's medical records, IEPs, or psychological assessments.

Based on the Wechsler tests, claimant obtained a Verbal Comprehension Index of 58, which is less than 1 percentile; a Perceptual Reasoning Index of 69, which is less than 1 percentile; a Working Memory Index of 63, which is at the 1st percentile; and a Processing Speed Index of 71, which is at the 3rd percentile. Claimant's full scale Intelligence Quotient was 59, which Dr. Reznick stated is in the mild mentally retarded range.

Dr. Reznick described claimant as able to function independently: he is able to perform rudimentary household chores independently; he is able to run simple errands alone; he can drive a car independently. He is able to cook meals independently. He can perform self-care activities. But, in a work environment, Dr. Reznick found that claimant is very restricted functionally: he is unable to perform any work tasks in a normal work environment without supervision, even simple and repetitive tasks. He would be unable to understand, remember or carry out even simple verbal instructions on a consistent basis in a normal work environment without supervision. He would experience extreme difficulties interacting with others in the workplace. He appeared incapable of observing even basic work and safety standards satisfactorily in a normal work environment, and he also appeared incapable of managing his own financial affairs independently.

Testimony of Laura Gutierrez, Ph.D.

11. Laura Gutierrez, Psy.D., obtained a doctorate in psychology in 2011 and has served as a staff psychologist at IRC since October 2013. She is licensed in California as a clinical psychologist. Her duties include reviewing records and documentation, performing

comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services.

12. Dr. Gutierrez reviewed the IEPs and psychological reports that are part of the record. In assessing claimant's eligibility for regional center services, Dr. Gutierrez considered the diagnostic criteria for intellectual disability and for autistic spectrum disorder in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V).

Dr. Gutierrez opined that claimant was not eligible for regional center services based on an intellectual disability or autism spectrum disorder that started before he turned 18 years old. Dr. Gutierrez found that claimant had a specific learning disability, not an intellectual disability, and this condition caused claimant to perform below his abilities as the discrepancy between his non-verbal test scores, which were in the low-average range, and his other test scores, which were in the below-average and low range, show.

Dr. Gutierrez also found that that claimant's behaviors and adaptive skills were inconsistent with an autism diagnosis. His adaptive skills and behaviors were average for children his age, except in the area of language. Claimant made good eye contact; he had friends at school and got along with them; and he was described by school psychologists as polite and cooperative.

13. Dr. Gutierrez dismissed Dr. Reznik's diagnosis of mental retardation and autism. Dr. Reznik did not clinically assess claimant for autism, as the standard of practice required; Dr. Reznik failed to administer a standard assessment test on claimant, like The Autism Diagnostic Observation Schedule (ADOS), before he found that claimant has an autistic disorder. Dr. Gutierrez commented that one cannot just look at someone and assess an autistic disorder.

14. On cross-examination, Dr. Gutierrez testified that she did not need to review claimant's elementary school records because claimant's high school records and assessments reflected his most recent adaptive skills and behaviors.

Claimant's Mother

15. Claimant's mother is understandably concerned for her son. She sees claimant as isolated; she has not known him to have any kind of relationships or friends. He spends his time looking at Japanese animation. She wants regional center services for claimant so that he can obtain the supports and services he needs so that he may have a normal life. Claimant's mother believes that claimant was diagnosed with autism since birth. However, she did not present any evidence in this regard.

Claimant

16. Claimant testified that he lives with his parents and three siblings. He graduated from high school with a diploma in 2006. He can take care of himself. He can

cook for himself and can safely stay at home by himself. He has a driver's license and drives his father's car to the hospital where he does volunteer work. Claimant had his own car at one time. Claimant does not presently work, but he wants to obtain employment. Claimant has attended community college and plans to attend community college at some time in the future. Transcripts from Mount San Jacinto College and Los Angeles City College document that he took thirteen courses between 2006 and 2012 and had a C grade point average.

Claimant is receiving services through the Department of Rehabilitation (DOR). Through DOR claimant was able to attend EXCEED, a program that provides vocational training for persons with developmental disabilities. Claimant wants to continue at EXCEED, but for claimant to remain in this program, he must be eligible for regional center services, according to DOR.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she is suffering from a substantial disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must

also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(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:

¶ . . . ¶

(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. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services and supports to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. “Services and supports” for a person with a developmental disability can include diagnosis and evaluation. (Welf. & Inst. Code, § 4512, subd. (b).)

8. A regional center is required to perform initial intake and assessment services for “any person believed to have a developmental disability.” (Welf. & Inst. Code, § 4642.) “Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs” (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, “the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources.” (Welf. & Inst. Code, § 4643, subd. (b).)

9. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

Evaluation

10. Claimant did not prove that he qualifies for regional center services based on autism or mental retardation. His appeal is denied.

Claimant’s IEPs and psychological assessments show that, before he turned 18, claimant had a special learning disability in expressive language; he did not have mental retardation. A learning disability does not constitute a developmental disability pursuant to California Code of Regulations, title 17, section 54000, subdivision (b)(2).

These same IEPs and psychological assessments also show that, before he turned 18, claimant did not have autism. His adaptive skills and behaviors were inconsistent with the diagnostic criteria for Autistic Spectrum Disorder in the DSM-V. Claimant was socially appropriate; he was not a behavior problem; he was polite; he was cooperative; and he had friends.

Dr. Rezniak’s report is the only evidence to suggest that claimant has mental retardation and/or autism. His diagnoses are not accepted for a number of reasons. First, Dr. Rezniak’s mental retardation and autism diagnoses conflict with claimant’s IEPs and psychological assessments, as Dr. Gutierrez credibly explained. Dr. Rezniak did not administer a standard measure test on claimant, like the ADOS, to assess whether claimant has autism. Dr. Rezniak did not review claimant’s IEPs and psychological assessments. And, Dr. Rezniak did not address whether claimant had mental retardation and/or autism before he turned 18; he evaluated claimant when claimant was 26 years old.

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ORDER

Claimant's appeal from Inland Regional Center's decision to deny his application for regional center services based upon mental retardation and/or autism is denied.

DATED: November 7, 2014

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.