BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2014050588

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 4, 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 not present during the hearing.

The matter was submitted on November 4, 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 4-year-old boy who lives with his parents and two siblings. Until he turned 3, claimant received Early Start services. He is not receiving special education services through his school district.

2. Claimant seeks regional center services due to mental retardation and autism.

3. By letter dated March 8, 2014, IRC advised claimant that it conducted an intake evaluation and determined that claimant is not eligible for regional center services on the basis of autism or mental retardation.

On April 24, 2014, claimant signed a Fair Hearing Request to appeal IRC's decision.

Written Psychological and Medical Evaluations

REPORT OF EDWARD B. PFLAUMER, PH.D.

4. IRC referred claimant to Edward B. Pflaumer, Ph.D., to assess claimant for a possible autistic disorder/and or mental retardation.

5. Dr. Pflaumer evaluated claimant on April 8, 2014, utilizing the following assessment procedures: Bayley Scales of Infant Development-3rd edition, cognitive assessment; Vineland Adaptive Behavior Scales-II; and the Autism Diagnostic Observation Schedule-2 (ADOS). In addition, Dr. Pflaumer reviewed claimant's records; he conducted a diagnostic interview of claimant; and he interviewed claimant's family.

6. Dr. Pflaumer concluded that claimant did not have an intellectual disability and was not autistic because claimant's adaptive skills ruled out his having either condition. According to the Vineland Adaptive Behavior Scales, claimant scored a 76 in communication domain; an 81 in daily living domain; a 75 in socialization domain; and a 67 in motor skills domain. Claimant's composite score was 71. Dr. Pflaumer was able to conclude that claimant did not have an intellectual disability, even though claimant was not able to complete cognitive testing because he was too distracted. Dr. Pflaumer attributed claimant's inability to complete the cognitive testing to the symptoms of Attention Deficit Hyperactivity Disorder.

7. Dr. Pflaumer found that claimant did not have an autistic disorder based on the behaviors he observed. Claimant did not exhibit ritualistic or repetitive behaviors; he displayed a strong social interest; and, even though his language skills were limited, he was able to express his thoughts and feelings.

REPORT OF SANFORD SCHNEIDER, M.D.

8. Claimant submitted a report from neurologist Sanford Schneider, M.D. Dr. Schneider's report stated that he "felt" that claimant "was mildly or moderately intellectually delayed." Dr. Schneider made this finding based on his observations of claimant. He did not conduct any intellectual assessments of claimant.

CLAIMANT'S MEDICAL RECORDS

9. Claimant also provided medical records at his hearing. These records document that claimant has hearing loss.

Testimony of Sandra Brooks, Ph.D.

10. Sandra Brooks, Ph.D., is a licensed clinical psychologist and a staff psychologist at IRC. Her duties include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services.

11. Dr. Brooks reviewed Dr. Pflaumer's report and the materials claimant submitted at the hearing. Dr. Brooks 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. Brooks opined that claimant was not eligible for IRC services based on an intellectual disability or autism spectrum disorder. Dr. Brooks noted that, except for the motor skills domain, in which claimant had a very low score of 70, he had moderately low average scores in all areas of adaptive functioning. Dr. Brooks concurred with Dr. Pflaumer's assessment that claimant did not have an autistic disorder.

12. Dr. Brooks gave no weight to Dr. Schneider's finding that claimant is mildly to moderately intellectual delayed because Dr. Schneider did not perform any testing on which to base his conclusion.

Testimony of Claimant's Mother

13. Claimant's mother wants regional center services because claimant is not receiving any services from any source. The school district screened claimant and found him ineligible for services. Claimant's mother has consulted with an advocate to pursue claimant's options and plans to appeal the school district's action. She is concerned that when claimant attends school he will have difficulties. She does not think the school can control him.

Claimant is constantly in motion and wants to play all the time. He doesn't walk; he runs. Claimant does not answer to his name. He does not appreciate risks. He likes to eat and watch television. His favorite show is Mickey Mouse. He loves to play with his brother, but he has conflicts with him if his brother plays with his toys.

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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. Pursuant to the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. 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. 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).)

7. 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

8. The evidence does not support claimant's assertion that he has mental retardation and/or autism. Two clinicians credibly stated that claimant does not have these conditions. Dr. Pflaumer found that claimant has adaptive skills that are inconsistent with mental retardation and social skills and behaviors that are inconsistent with autism. Dr.

Brooks agreed with Dr. Pflaumer's opinion. The only evidence that arguably supports claimant's assertion that he has mental retardation is Dr. Schneider's report. But Dr. Schneider did not find that claimant has mental retardation. Dr. Schneider felt that claimant is "mildly or moderately intellectually delayed." Because he did not perform any testing to substantiate this conclusion, his conclusion is given no weight.[1]

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 20, 2014.

_____/s/_____
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.

[1] Even if his opinion could be fully credited, his opinion does not support a finding that claimant has mental retardation because "mildly or moderately intellectually delayed" does not equate with an intellectual disability under the DSM-V.