

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015120059

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 4, 2016.

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

Claimant's foster mother appeared on behalf of claimant. Claimant was present throughout the administrative proceeding.

The matter was submitted on February 4, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act as a result of cerebral palsy?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant has been receiving Early Start services since he was approximately one year old based on a diagnosis of cerebral palsy. Services terminated on October 2, 2015,

his third birthday. Claimant's mother applied to IRC so claimant could obtain services under the Lanterman Act.

2. On October 14, 2015, IRC notified claimant that he was not eligible for regional center services because the records he provided did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability or one that required treatment similar to the treatment required by individuals with an intellectual disability.

3. On October 16, 2015, claimant filed a Fair Hearing Request appealing IRC's determination. In the Fair Hearing Request, claimant asked IRC to reconsider its determination and find claimant eligible for regional center services based on the diagnosis of cerebral palsy, "associated delays" and "physical disabilities".¹

4. On January 7, 2016, IRC held an informal meeting with claimant's mother and representative. During the meeting, the parties discussed claimant's eligibility for regional center services based on a diagnosis of cerebral palsy. IRC reviewed the relevant records and scheduled claimant for a medical evaluation by Mary Lam, M.D., on January 19, 2016.

5. Following the medical evaluation and based on a comprehensive review of all of claimant's records on file, IRC adhered to its original determination that claimant was not eligible for IRC services.

6. IRC does not dispute claimant's diagnosis of cerebral palsy but asserts that claimant is not substantially disabled in three or more major life activities.

*Cerebral Palsy*²

7. Cerebral palsy is defined as a muscular defect caused by insult to the brain before, during, or after birth. Symptoms of cerebral palsy usually manifest in the beginning stages of life and become more apparent by the time the child has reached the age of five. The brain damage itself remains static; the consequences of the brain damage vary depending on each individual. Some people with cerebral palsy may manifest little or no outward symptoms while others may have problems eating, speaking, and controlling their muscles.

A three-year old child diagnosed with cerebral palsy does not qualify for regional center services unless that child has significant functional limitations in three or more areas of major life activity as appropriate for that child's age. For a three-year-old child, those

¹ At hearing, an inquiry was made as to whether claimant's mother was seeking services based on an intellectual disability or a handicapping condition closely related to an intellectual disability. Claimant's mother confirmed that her request was limited to eligibility based on cerebral palsy.

² This summary was obtained from the testimony of Evelyn Chun, M.D.

areas are: self-care; receptive and expressive language; learning; mobility; and to some extent, self-direction.

Claimant's Background

8. Claimant is a three-year-old male. Claimant was born with fetal alcohol syndrome. He is hyperactive and has experienced some emotional problems. Although claimant met his developmental milestones early, he was diagnosed with cerebral palsy. Claimant has been receiving Early Start services since approximately one year of age. The services included occupational therapy, physical therapy, and speech therapy.

Evidence Presented by IRC

9. Dr. Lam evaluated claimant on January 19, 2016. She observed claimant to be alert and oriented. He demonstrated good eye contact. Claimant did not exhibit any sensory or cranial deficiencies. His motor tone and strength appeared normal, and he was able to run and jump. Claimant's reflexes were within the normal range, although he had some spasticity in his lower extremities. Dr. Lam concluded, based on her observations and a review of claimant's medical records, that claimant did not qualify for regional center services.

10. On January 4, 2016, Gamil Fteeh, M.D. evaluated claimant. Dr. Fteeh reviewed claimant's medical history and interviewed claimant's foster mother. Dr. Fteeh observed claimant to be well developed, well nourished, awake and reactive. Claimant's language was "delayed" for his age. Claimant's facial and muscle bulk were normal and symmetric. Claimant displayed mild spasticity in the ankles while walking, but Dr. Fteeh did not note any substantial limitations in motor skills. Dr. Fteeh concluded that claimant would benefit from speech therapy due to an expressive language disorder.

11. As part of the IRC evaluation process, Sandra Brooks, Ph.D., evaluated claimant on July 21, 2015. Dr. Brooks concluded that claimant was functioning in the average range of nonverbal intellectual ability but did show signs of an articulation or communication disorder. IRC does not dispute that claimant exhibits signs of an articulation or communication disorder.

12. IRC obtained and considered other medical records including a child and family social assessment dated January 13, 2014; a medical genetics consultation report dated April 15, 2015; and progress notes regarding claimant's medical progress dated January 2, 2015. The records are all in agreement that claimant suffers from delays in communication. None of the records contained evidence of significant functional limitations in three or more major life activities.

Testimony of Claimant's Foster Mother

13. Claimant's foster mother is very active in claimant's care. She believes claimant has benefitted from Early Start services and would like to see him continue to receive speech therapy due to his communication delays. She loves claimant and hopes to adopt him very soon.

She described claimant as a "gross motor skill prodigy" and stated that he had no problems in that area. She stated that claimant did have some problems with fine motor skills such as negotiating to urinate in the toilet, closing buttons, and similar things. Claimant's foster mother is most concerned about his speech delays. She stated that claimant does have expressive and receptive communication skills but that he is delayed. She stated that claimant's biggest issues are with articulating sounds at the beginning and ends of sentences.

Claimant's mother understood that, in order to be eligible for regional center services under the Lanterman Act, claimant must exhibit significant limitations in three or more major life activities. She stated, however, that even if he did not qualify under the statute, she would be remiss in her duties as a foster mother if she did not try to obtain the best services for claimant in order to help him develop properly.

Observations

14. Claimant attended the hearing and remained present throughout the proceedings. Claimant initially sat by his foster mother. As he became more at ease, he played with a toy car, a Scooby Doo figurine, and other toys provided by IRC. Claimant ran around the room, played on the floor, walked around the conference room table, explored different items in the room, and interacted with witnesses and the administrative law judge when stimulated by a question or some other form of communication. Claimant laughed and smiled. Claimant was a very energetic little boy. During the hearing, claimant did not exhibit any difficulty with mobility. Without benefit of the knowledge of claimant's medical history, one would not be able to ascertain from claimant's outward appearance that has been diagnosed with cerebral palsy.

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 provides:

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 a disability that “originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. Developmental disability includes intellectual disability, cerebral palsy, epilepsy, and autism and “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.” (*Ibid.*) Handicapping conditions that are “solely physical in nature” do not qualify as developmental disabilities under the Lanterman Act.

5. California Code of Regulations, title 17, section 54000 provides:

“(a) ‘Developmental Disability’ means a disability that is attributable to [an intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [an intellectual disability] or to require treatment similar to that required for individuals with [an intellectual disability].

(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.”

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. The burden was on claimant to establish his eligibility for regional center services.

Claimant's diagnosis of cerebral palsy, his difficulties with expressive and receptive communication, and the mild spasticity in lower extremities are not in dispute. Insufficient evidence was presented, however, to show that claimant has significant functional limitations in the areas of mobility, learning, self-care, or self-direction, as appropriate for a three year old child. Accordingly, he is not eligible for regional center services at this time.

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ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services and supports is denied.

DATED: February 17, 2016

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Kimberly Belvedere
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KIMBERLY J. BELVEDERE
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.