

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016010149

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 16, 2016.

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

Claimant represented herself.

The matter was submitted on February 16, 2016.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code § 4400 et seq.)?

FACTUAL FINDINGS

1. Claimant is a 32 year-old female. She applied for regional center services because she said her attorney, who is representing her on her application for Social Security disability benefits, told her to apply. Claimant did not present any information to IRC that she had a developmental disability under the Lanterman Act that originated before the age of 18. On July 2, 2014, IRC notified claimant of its decision that she was not eligible for

regional center services. IRC did not conduct an intake or assessment to assess claimant for a development disability under Welfare and Institutions Code section 4642.

2. On December 22, 2015, claimant filed a fair hearing request appealing that decision. In her fair hearing request, she said she applied for regional center services because her attorney told her that she qualified for services.¹

3. On January 7, 2016, IRC held an informal telephonic conference with claimant. Following the conference, IRC sent claimant a letter stating it stood by its decision to deny claimant's application for services because she did not have an "Intellectual Disability," specifically, or another disability. The record is unclear as to why IRC stated this. However, at the informal conference claimant did not provide information to IRC that she, in fact, has an intellectual disability.

4. Two documents were submitted in connection with claimant's application. In a letter dated April 4, 2013, Lori Spire, a social worker with the County of San Luis Obispo Department of Social Services, wrote that she was referring claimant to IRC for an assessment. Ms. Spire stated that she was trying to reunify claimant with her two-year-old child, and claimant had agreed to undergo an assessment at Tri-Counties Regional Center to "address some concerns about her mental and emotional ability to appropriately care" for her child. Ms. Spire asked that IRC perform this assessment because claimant moved to San Bernardino County.

A second document is from a school district in San Bernardino County where claimant received adult education services in 2012 and 2013. The letter stated that claimant was not receiving special education services.

5. At the hearing, claimant testified that the only thing wrong with her is that she is depressed. She said that this depression makes it difficult for her to function and has worsened since she lost custody of her children about two years ago. Around the time she lost custody of her children, she was placed on a 5150 hold and faced alcohol-related charges.² Claimant underwent some level of alcohol treatment and attended Alcoholics Anonymous meetings. Claimant has been homeless, but presently she lives with a friend where she receives mail.

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¹ IRC did not contest the timeliness of claimant's fair hearing request.

² Welfare and institutions Code section 5150 allows a qualified clinician to involuntarily confine an individual suspected of having a mental disorder who may be a danger to himself or others. Law enforcement officers may request a 5150 hold.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for 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. Under 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 can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled 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, also 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:

(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. . . .

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).)

Evaluation

7. Claimant did not present evidence that she suffers from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or a disabling condition closely related to intellectual disability, or requiring treatment similar to that required for intellectually disabled individuals. Claimant, thus, has not shown that she qualifies for regional center services under Welfare and Institutions Code section 4512, subdivision (a).

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ORDER

Claimant's appeal from IRC's determination that she is not eligible for regional center services and supports is denied.

DATED: February 26, 2016

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Abraham Levy
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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.