

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BRANDON B.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011031340

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino, California on December 20, 2011.

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

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on December 20, 2011.

On December 27, 2011, ALJ Hewitt received an email from his office containing certain objections by Leigh-Ann Pierce. Ms Pierce correctly objected to ALJ Hewitt considering any information contained in some post-submission documents, including: a letter from Dr. Davidson, faxed to OAH, attention ALJ Hewitt on December 22, 2011, and an email to PALJ Alvord and IRC sent by Dr. Davidson's assistant on December 21, 2011. ALJ Hewitt has been out of the office and did not receive any of the aforementioned communications from Dr. Davidson's office. Although the information was sent as an attachment to the December 27, 2011, email from OAH to ALJ Hewitt, ALJ Hewitt read IRC's objection first and did not read any of Dr. Davidson's emails. Ms. Pierce's objection is sustained. No consideration shall be given to any post-submission documents and the parties are admonished not to have any ex parte communications with the hearing ALJ.

ISSUE

Is claimant eligible for agency services under the diagnosis of Autistic Disorder?

FACTUAL FINDINGS

1. Claimant is an 11 year old male.
2. Claimant applied for agency services sometime before January 27, 2011. On April 5, 2011, after reviewing claimant's records, and holding an informal meeting with claimant's mother, the agency notified claimant of the following:

“ . . . Dr. Lindholm explained that the results [of intellectual testing] are consistent with a child who has Attention deficit hyperactivity disorder (ADHD) and/or Oppositional defiant disorder (ODD). She confirmed that he does not have mental retardation.

“You also provided a copy of an Autism Diagnostic Observation Schedule (ADOS) test that was completed by the school to determine if [claimant] had Autistic Disorder. The ADOS is a standardized protocol for assessing social and communicative behavior associated with autism. You stated that you questioned the validity of the school's test results. Dr. Lindholm agreed. As a result, Dr. Lindholm offered for IRC to complete an ADOS test and to also complete a measure of [complainant's] adaptive functioning. She did not recommend additional intelligence testing due to the extensive testing already completed.” (Exh. 5)
3. On April 28, 2011, claimant was evaluated by staff psychologist Paul Greenwald, Ph.D., to determine if claimant was eligible for agency services under a diagnosis of Autistic Disorder. Dr. Greenwald reviewed claimant's records, including previous assessments, obtained a developmental and educational history from claimant's mother, and then assessed claimant using the following assessment procedures: 1) administration of the ADOS, module 2; 2) clinical interview of mother using items from Autism Diagnostic Interview Revised (ADI-R); 3) Vineland-II Adaptive Behavior Scales; and 4) clinical observations of claimant. As a result of Dr. Greenwald's use of assessment tools and his observations of claimant, Dr. Greenwald concluded that claimant did not suffer from Autistic Disorder; rather, claimant suffered from ADHD, ODD, and a reading disorder. Dr. Greenwald did believe that claimant may be suffering from a condition on the autism spectrum, such as PDD-NOS, and/or Bipolar Disorder Not Otherwise Specified; however, Dr. Greenwald concluded that none of claimant's conditions made him eligible for agency services.
4. Claimant disagreed with Dr. Greenwald's determination and elected to be further evaluated by Licensed Educational Psychologist Chris Davidson. Dr. Davidson conducted a

comprehensive Psycho-Educational Evaluation of claimant in July 2011. Dr. Davidson extensively reviewed claimant's history of evaluations, interviewed mother, observed claimant and administered several different evaluation instruments, including the ADOS, module 3. Dr. Davidson evaluated claimant during four, five-hour long, assessment sessions. Based on her assessment, Dr. Davidson concluded that claimant suffered from Autistic Disorder, as defined by the Diagnostic and Statistical Manual of Mental Disorders –Fourth Edition-Third Revision (DSM-IV-TR). According to the ADOS, module 3, results, the “gold-standard” for assessing Autistic Disorder, “[Claimant’s] Autism Diagnostic Total Score was 13 and **Above** the Autism Cut-Off indicating he meets the criteria for Autism.” (Exh. A, pg. 24, emphasis in original)

Dr. Davidson set forth the DSM-IV-TR criteria for Autistic Disorder in her report. The criteria are as follows:

A. A total of six or more items from 1, 2, and 3 with at least two from 1 and one each from 2 and 3:

1) Qualitative impairment in social interaction, as manifested by at least two of the following:

- a) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures and gestures to regulate social interactions;
- b) Failure to develop peer relationships appropriate to developmental level;
- c) A lack of spontaneous seeking to share enjoyment, interests or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest);
- d) Lack of social or emotional reciprocity.

2) Qualitative impairments in communication as manifested by at least one of the following:

- a) Delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);
- b) In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;
- c) Stereotyped and repetitive use of language or idiosyncratic language;
- d) Lack of varied, spontaneous, make-believe play or social initiative play appropriate to developmental level.

3) Restricted repetitive and stereotyped patterns of behaviors, interests and activities as manifested by at least one of the following:

- a) Encompassing preoccupations with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;
- b) Apparently inflexible adherence to specific, nonfunctional routines or rituals;
- c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole-body movements);

d) Persistent preoccupation with parts of objects.

B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age three years:

- 1) Social interactions;
- 2) Language as used in social communications, or
- 3) Symbolic or imaginative play.

C. The disturbance is not better accounted for by Rett's Disorder (only diagnosed in females and typically associated with Profound Mental Retardation) or Childhood Disintegrative Disorder (a distinctive pattern of developmental regression following at least two years of normal development).

In applying the DSM-IV-TR criteria to complainant, Dr. Davidson found the following:

“For criterion one, [claimant] displays social interaction impairments in all four number one criteria: 1a, 1b, 1c, and 1d. [Claimant] has a history of impairments in social interactions.

“For criterion two, [claimant] exhibits impairments in 2a, 2b, 2c, and 2d. He has a history of inability to sustain conversations, uses repetitive phrases over and over, especially when he is not understood or wants something and lacks play and social play appropriate to his developmental level of a sixth grade student.

“For criterion three, [claimant] does exhibit 3a and 3b. He exhibits preoccupation with restricted patterns of interest that are abnormal in either intensity or focus and also inflexible adherence to specific, nonfunctional routines or rituals.” (Exh. A, pgs. 37-38)

Based on her assessment, Dr. Davidson concluded, as follows:

“[Claimant] meets the eligibility for Regional Center Services. It has been shown that he has a qualifying developmental disability, Autism, which was onset before his 18th birthday, will indefinitely continue, and which is currently substantially disabling in the following 5 areas: Self-Care, Receptive and Expressive Language, Learning, Self-Direction and Capacity for Independent Living.

“[Claimant] has a condition that results in major impairment of social and cognitive functioning. He requires a highly structured environment in a nonpublic school, that serves students with Autism, approximately three to five students in a classroom and effective behavioral supports and social skills training to address his lack of:

“language, peer interaction skills, problem solving skills such as making choices and decisions concerning personal and social life, management of emotions, appropriate assertiveness and self-advocacy skills, self-help skills, the ability to perform everyday activities that minimizes reliance on others, following safe practices, caring for his own health, preparing meals, task completion and extremely limited academic and knowledge skills.” (Exh. A, pg. 38)

5. Both experts, Dr. Greenwald and Dr. Davidson testified during the hearing in conformity with the contents of their reports.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a “Developmental Disability” as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely. . .” California Code of Regulations, title 17, section 54000 further defines “Developmental Disability” as follows:

“(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 . . .

* * *

“(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.”

2. In seeking services, the burden rests on claimant to establish, by a preponderance of the evidence (i.e., it is more likely than not), that he has a substantially disabling qualifying developmental disability (See Evid. Code, § 115.)

3. The facts in this case, considered as a whole, reveal that it is more likely than not that claimant suffers from Autistic Disorder as defined by the DSM-IV-TR and that he is substantially disabled.

ORDER

The agency’s conclusion that claimant is not eligible for agency services is reversed. The agency shall proceed forthwith to determine the nature and extent of agency services claimant requires.

DATED: January 2, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.