BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2014090673

DECISION

On December 8, 2014, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone conference.

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

Claimant's mother represented claimant.

Oral and documentary evidence was introduced, and the matter was submitted on December 8, 2014.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) on the basis of a diagnosis of mental retardation[1] or autism?

[1] The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), recently replaced the term "mental retardation" with the term "intellectual disability." But, the term mental retardation will be used in this decision because the Lanterman Act requires regional centers to provide services for individuals who have a developmental disability, including "mental retardation."

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is an eight-year-old girl who lives with her adoptive mother. Claimant's mother sought regional center services for claimant.

2. Some time before July 2, 2014, claimant's mother requested that IRC provide regional center services to claimant. At that time, the claim of eligibility for services was made on the basis of autism. Claimant's mother provided various documents to IRC, including letters from claimant's psychiatrist and physician, and documents from various school districts.

3. On July 24, 2014, IRC notified claimant that she was ineligible for regional center services because she did not have a substantial handicap that qualified her to receive those services. The Notice of Proposed Action specified that claimant did not have a substantial handicap as a result of mental retardation, autism, a condition closely related to mental retardation, or a condition that needs treatment similar to that needed by mentally retarded individuals. Claimant was thereafter evaluated by the California Department of Education Diagnostic Center (CDEDC) during the week of September 8, 2014. Following the CDEDC evaluation, claimant's mother provided the IRC with the CDEDC's evaluation to support claimant's request for regional services on the basis of a claim of intellectual disability.

4. On September 16, 2014, claimant's mother filed a fair hearing request appealing IRC's decision. In the fair hearing request, claimant's mother contended, "[M]y child has the conditions outlined for your criteria medically . . . . [and] has a . . . handicap."

5. On September 29, 2014, claimant's mother met with representatives of IRC to discuss the fair hearing request. On October 1, 2014, IRC sent a letter to claimant's mother summarizing the informal meeting and stating that the IRC was denying claimant eligibility based on the claim of Autism Spectrum Disorder. The letter did not mention the claim of eligibility for regional center services based on claimant's alleged intellectual disability.

Educational, Medical and Psychological Records of Claimant

6. Claimant has an extensive history of behavioral, psychological, and medical problems. She has been diagnosed with a variety of disorders, including Attention Deficit Disorder, Oppositional Defiant Disorder, Learning Disabilities, Mood Disorder, and Sensory Processing Disorder. She is currently taking multiple medications to manage her behavioral, psychological, and medical issues.

7. Claimant has been evaluated on multiple occasions to determine her special education needs. Claimant has been placed in special education classes since May 22, 2013, initially on the basis of a primary disability of emotional disturbance and a secondary

disability of other health impairment. The Riverside County Special Education Local Plan Area (SELPA) Individualized Education Program (IEP) for claimant dated April 29, 2014, indicated that claimant had difficulty with reading, writing, math, social skills, emotional development, and communication.

8. During the week of September 8, 2014, claimant was evaluated by a CDEDC trans-disciplinary team consisting of Lisa Moncayo, M.A., CCC-SLP, Speech-Language Pathologist; Scott Gutentag, Ph.D., School Psychologist; Jenny Quan, Ph.D., Education Specialist; Lulu W. Wang, M.D., Developmental and Behavioral Pediatrician; and Michelle Cuevas, Ph.D., Clinical Psychologist. The CDEDC evaluation was summarized in a report that was provided to IRC. The CDEDC report stated:

> [Claimant's] cognitive functioning (e.g., verbal and nonverbal reasoning, shifting, initiating, planning, verbal learning, picture memory, verbal recall) fell significantly below average coupled with deficits in adaptive behavior (responding independently to environmental demands and carrying out daily living skills appropriate for her age). These results mean that she meets the criteria for having an intellectual disability (formally known as mental retardation).

The CDEDC report stated that claimant met the criteria for intellectual disability (also referred to as mental retardation) as defined by the DSM-V based upon an evaluation that used multiple sources of information across various situations, including "observations across settings, clinical interviews, and a battery of formal and informal measures across a range of areas." The CDEDC report specifically stated that claimant "meets DSM-V criteria for intellectual disability" and that claimant "has an intellectual disability, which is a lifelong disability . . . . [S]he is not expected to develop adult level reasoning skills." The CDEDC report stated that the tests administered to claimant to determine her intellectual ability took into account the difficulty in administering these tests because of her other underlying problems. The report stated:

> Although [claimant] frequently complained about the difficulty of cognitive tests (especially when not in a play-based format), tried to escape from tasks, and periodically needed other adults in the room, the results are considered valid. The subtests she did not complete or follow the directions were not included in the analysis. Frequent breaks and prizes were provided to help her proceed through the evaluation.

9. The CDEDC report concluded that based on the assessment, claimant did not have symptoms consistent with an autism spectrum disorder.

10. On November 12, 2014, the Riverside County SELPA amended claimant's IEP to indicate that, based on the CDEDC assessment, claimant's primary eligibility criteria

for special education was a diagnosis of Intellectual Disability.

11. Dr. Takesha Cooper, Staff Psychiatrist IV, Lake Elsinore Family Mental Health Services, has provided monthly psychiatric treatment for claimant since December 18, 2013. Dr. Cooper authored a letter dated December 5, 2014, stating that claimant's presentation, as well as the testing provided by CDEDC, supported claimant's diagnosis of Intellectual Disability Mild and a provisional diagnosis of Intermittent Explosive Disorder.

Testimony of Sandra Brooks, Ph.D.

12. Dr. Sandra Brooks received her Ph.D. in Clinical Psychology from Loma Linda University in 2006. Dr. Brooks has worked as a staff psychologist at IRC for about eight years. Her duties include reviewing records and conducting evaluations to assist the IRC multidisciplinary team in determining whether potential clients are eligible for regional center services. During her employment at IRC, Dr. Brooks has reviewed the records of more than one thousand clients or potential clients to determine their eligibility for regional center services. Dr. Brooks testified that the IRC uses the DSM-V criteria in reaching eligibility determinations for regional center services.

13. In July 2014, Dr. Brooks reviewed claimant's records and met with claimant for about two and one-half hours to evaluate claimant's eligibility for regional center services. At that time, Dr. Brooks focused her evaluation only on whether claimant had a disorder on the autism spectrum. Dr. Brooks was not concerned about a diagnosis of Intellectual Disability. Dr. Brooks testified that, had she been concerned with a diagnosis of Intellectual Disability, she would have conducted intellectual testing. Dr. Brooks stated that claimant's behavior deteriorated during the two and one-half hours she spent with claimant, and that as a result of that deterioration it would not have been possible for her to test claimant's intellectual ability. According to Dr. Brooks, claimant has never undergone standardized testing related to assessing her intellectual abilities.

14. Dr. Brooks provided a report summarizing her review of claimant's files and testified about her evaluation of claimant. Dr. Brooks testified that claimant did not present with autism spectrum-related symptoms and that claimant's behavioral presentation was inconsistent with a diagnosis of autism spectrum disorder. She testified that claimant demonstrated a level of social interest and awareness that was inconsistent with autism spectrum disorders despite some sensory and emotional issues.

15. Dr. Brooks testified that claimant's records included test results that indicated claimant possessed borderline intellectual functioning and borderline to low average academic achievement. Dr. Brooks believed that claimant's reported test scores may have underestimated claimant's actual intellectual abilities because behavioral issues could have caused lower test scores. Dr. Brooks believed that test results relating to claimant's intellectual ability would be skewed towards lower scores because of her behavioral and emotional issues, and the scores that were obtained through testing would not reflect her true cognitive abilities. Dr. Brooks further testified that the CDEDC's conclusion that claimant

was intellectually disabled was subjective and was not based on standardized IQ testing.

Testimony of Claimant's Mother

16. Claimant's mother testified that claimant has a long history of behavioral problems and learning difficulties. Claimant's mother attempted to have claimant tested to assess claimant's intelligence ("IQ testing"). However, school districts currently are not allowed to do IQ testing on African-American students pursuant to a California State Department of Education decision; instead, the school districts have provided an estimate of claimant's level of intellectual functioning through various data collection methods.

17. Claimant's mother testified that because the school district had difficulty in providing a diagnosis for claimant, the school district sent claimant to the CDEDC for a six hour per day evaluation for the week of September 8, 2014. The CDEDC tested claimant using various tests that took into account claimant's special needs. Numerous specialists worked with claimant to determine her diagnosis.

The Parties' Arguments

18. IRC argued that the records provided by claimant's mother for IRC's review failed to establish that claimant had any kind of diagnosis that would qualify her for regional center services. IRC further argued that the CDEDC testing provided was subjective and the CDEDC finding of Intellectual Disability was based on testing that was not standardized.

19. Claimant's mother disagreed with IRC's position, claiming that the evidence she presented was sufficient to establish claimant's eligibility for services on the basis of mental retardation.

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. 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 provided to 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 regional center services under the Lanterman Act if he or she can establish that he or she suffers 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 originate before the age of 18 and must continue or 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 exist before an individual can be 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.
>
> (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 under the Lanterman Act, the State of California 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 must provide 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 whether 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 under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services set forth in the Lanterman Act.

Evaluation

10. Claimant's mother originally asked for services based on a claim that claimant suffered from autism. The record contains no evidence that supports that claim. To the contrary, the evaluations from the IRC and CDEDC support the conclusion that claimant

does not suffer from an autistic spectrum disorder.

11. A preponderance of the evidence supports a finding that claimant possesses a developmental disability involving mental retardation, as defined by the Lanterman Act, that triggers IRC's obligation to provide claimant with regional center services. Claimant's CDEDC evaluation states that claimant suffers from Intellectual Disability. The CDEDC evaluation included multiple tests administered by various professionals over a period of approximately thirty-six hours, including the assessments of two psychologists and a pediatrician. Claimant's psychiatrist provided a letter stating that, based upon her observations of claimant and the CDEDC evaluation, she agreed with claimant's diagnosis of Intellectual Disability.

12. Eligibility for special education services does not establish eligibility for regional center services. The Lanterman Act and applicable regulations set forth the criteria an individual must meet to qualify for regional center services. The regional center uses different criteria for eligibility for regional center services than are used by a school district to determine eligibility for special education services.

13. While the school district did not administer standardized IQ testing to claimant because she is African-American, the CDEDC administered a battery of tests to measure claimant's intellectual abilities. While Dr. Brooks questioned the diagnosis of Intellectual Disability provided by CDEDC because standardized IQ testing was not administered and because the she believed the CDEDC's ultimate conclusion was subjective, Dr. Brooks also testified that because of claimant's behavioral and emotional issues, claimant would not be able to undergo standardized IQ testing. The weight of the evidence provided by claimant, including the CDEDC evaluation and the opinion of claimant's psychiatrist, was sufficient to demonstrate that claimant has an Intellectual Disability, or mental retardation, as defined by DSM-V. That evidence was more persuasive than the evidence the IRC presented to the contrary. In that respect, it is highly relevant that both IRC and the CDEDC use the DSM-V criteria in reaching determinations concerning an individual's diagnosis of Intellectual Disability and that the CDEDC used the DSM-V criteria to reach the determination that claimant has an intellectual disability, previously described in the DSM-IV as mental retardation.

ORDER

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

1. Claimant's appeal from Inland Regional Center's determination that claimant is not eligible for regional center services based upon claimant's assertion that she has Autism is denied.

2. Claimant's appeal from Inland Regional Center's determination that claimant

is not eligible for services based upon claimant's assertion that she has mental retardation is granted. Inland Regional Center shall provide services to claimant consistent with this decision.

DATED: December 22, 2014

_____/s/_____
DEBRA D. NYE-PERKINS
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.