

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Agency.

OAH No. 2015050001

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on June 15, 2015.

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

Claimant, who was present during the hearing, was represented by her mother, aunt and grandfather.

The matter was submitted on June 15, 2015.

ISSUE

Is claimant eligible for agency services based on a diagnosis of Autism Spectrum Disorder or Intellectual Disability?

FACTUAL FINDINGS

1. Claimant is three years old.
2. Claimant applied for agency services.
3. On February 2, 2015, Edward G. Frey, Ph.D., a licensed psychologist, performed a psychological assessment of claimant and authored a report containing his observations, findings and conclusions. As Dr. Frey noted in his report, “the primary focus of this assessment

is on developmental disabilities including, but not limited to, diagnoses such as Intellectual Disability and/or Autism Spectrum Disorder.” (Exh. 5)

Dr. Frey reviewed claimant’s records; obtained claimant’s family history; observed claimant; interviewed claimant’s mother; and administered the Wechsler Preschool and Primary Scale of Intelligence-IV; the Vineland Adaptive Behavior Scale- 2nd Edition; and the Childhood Autism Rating Scale - 2nd Edition-Standard Version. Dr. Frey summarized his findings as follows:

[Claimant] is a 3 year old little girl living with her family . . . Her mother reportedly is a consumer with Regional Center. She is described as a healthy child, and takes no ongoing medications.

The current assessment focused on the possibility of autism and/or Intellectual Disability.

Examiner administered the Wechsler Preschool and Primary Scale of Intelligence-IV. [Claimant’s] overall score is mildly delayed, however, examiner believes this is probably an under-estimation of her potential. [Claimant’s] non-verbal skills are in a borderline range.

Social adaptive assessment utilizing the Vineland Adaptive Behavior Scales also indicates most adaptive skills in the borderline range.

Assessment of autism was accomplished with the Childhood Autism Rating Scale, Second Edition, Standard Version. [Claimant’s] score on this instrument is in the minimal to no symptoms of Autism Spectrum Disorder.

In summary, examiner is highly reluctant to assign a diagnosis of either Intellectual Disability or Autism Spectrum Disorder based on the current test data.

DIAGNOSTIC IMPRESSION:

Examiner believes that the current assessment does not indicate the presence of an Autism Spectrum Disorder or Intellectual Disability. Future assessments, however, would be prudent.

RECOMMENDATIONS:

1. The inter-disciplinary team is advised that the current psychological evaluation does not find [claimant] to present with either an Intellectual Disability or an Autism Spectrum Disorder.

2. Given the weak cognitive scores on the current assessment, examiner would suggest cognitive re-assessment in one to two years.
3. It would seem highly beneficial for [claimant] to be enrolled in a preschool type program.
4. Participation in appropriate social and recreational activities.
5. Ongoing medical care as needed and available. (Exh. 5)

4. Inland Regional Center Staff Psychologist Sara DeLeon, Ph.D. reviewed the documents concerning claimant, including Dr. Frey's report. Based on that review, Dr. DeLeon testified that she agreed with Dr. Frey's conclusion that claimant does not have an Autism Spectrum Disorder and, Dr. Frey's determination that, at this time, claimant does not meet the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5) diagnostic criteria necessary to diagnose Intellectual Disability. Dr. DeLeon also agreed that re-testing in one to two years would be appropriate.

5. Claimant's grandfather testified about his experience with Intellectual Disability and his observations concerning claimant. His testimony is summarized as follows: his daughter, claimant's mother, suffers from Intellectual Disability; he adopted claimant's mother when she was seven years old and he has observed the way Intellectual Disability affected her; he observes the same type of "Intellectual Disability" behaviors in claimant that he observed in his daughter and he does not want to delay getting the care and treatment necessary to reduce or eliminate the effects of Intellectual Disability on claimant.

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;

(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.

2. 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.

3. The facts, considered as a whole, reveal that claimant does not have Autistic Spectrum Disorder. Furthermore, at this time, test results failed to establish that claimant suffers from Intellectual Disability; however, the experts agreed that claimant should be re-assessed in one to two years.

4. The burden rests on claimant to establish that she suffers from a qualifying, “substantial,” “Developmental Disability” and, in this case, claimant failed to establish her eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

ORDER

The agency's conclusion that claimant is not eligible for agency services is affirmed; however, the agency shall schedule claimant for re-assessment within 12 to 18 months from the date of this decision.

DATED: June 23, 2015.

_____/s/_____
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.