

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015090039

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 14, 2015, in San Bernardino, California.

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

Neither Claimant nor any person representing Claimant appeared at the hearing. Claimant was provided with adequate notice of the date, time and location of the hearing.

The matter was submitted on October 14, 2015.

ISSUE

Was the previous determination that Claimant was eligible for regional center services under the Lanterman Act on the basis of autism “clearly erroneous?”

FACTUAL FINDINGS

Jurisdictional and Background

1. Claimant is seven years old. In 2009, when he was one year and 11 months old, Claimant was evaluated by Sandra Brooks, Ph.D., a psychologist employed by IRC. Dr. Brooks concluded that Claimant had developmental delays, and IRC determined that he was qualified for early start intervention services under the California Early Intervention Services

Act (Gov. Code, § 95000 et seq.).¹ Although Dr. Brooks found that Claimant qualified for early intervention services, she “deferred” a diagnosis of autism due to Claimant’s age.

2. When Claimant was two years and 10 months old, IRC asked Thomas Gross, Ph.D., to evaluate Claimant to rule out autism or an intellectual disability.

3. Dr. Gross found that Claimant “continued” to qualify for regional center services under “a provisional diagnosis of Autism Disorder” due to his significant deficits in communication, self-care, and self-direction. Dr. Gross commented that his autism diagnosis was a borderline call because Claimant displayed behaviors inconsistent with an autism diagnosis and, as a result, he recommended that IRC reevaluate Claimant in two years. Dr. Gross did not find that Claimant was eligible for regional center services under the autism category as defined in Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000. Regardless, based on Dr. Gross’s report, IRC found that Claimant was eligible for regional center services under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.).

4. On March 21, 2014, IRC Staff Psychologist Paul Greenwald, Ph. D., assessed Claimant to determine if he continued to be eligible for regional center services. Dr. Greenwald concluded that Claimant did not meet the diagnostic criteria for Autism Spectrum Disorder, and that Claimant did not qualify for regional center services.

5. On August 12, 2015, effective September 20, 2015, based on Dr. Greenwald’s finding, IRC sent Claimant a Notice of Proposed Action to terminate his eligibility for regional center services.

6. On August 28, 2015, Claimant filed a Fair Hearing Request appealing IRC’s determination. On September 1, 2015, a notice of hearing was mailed to Claimant and his parents. This notice contained the time, date and location of the hearing.

Dr. Greenwald’s Report

7. Dr. Greenwald was asked to reevaluate Claimant based on Dr. Gross’s recommendation. On March 21, 2014, Dr. Greenwald conducted psychological assessments of Claimant and prepared a detailed report. He used the following assessment instruments to evaluate Claimant: the Wechsler Preschool and Primary Scale of Intelligence (WPPSI-IV); Autism Diagnostic Observation Schedule Module 2 (ADOS-2); Childhood Autism Rating Scale-2nd Edition (CARS2-ST); and the Vineland-II Adaptive Behavior Scales.

Dr. Greenwald found that Claimant did not qualify for regional center services under the autism category based largely on Claimant’s score on the ADOS-2. Claimant’s combined score for social affect and repetitive behavior score was five, which was below the

¹ The Early Intervention Services Act provides appropriate early intervention services for infants and toddlers who have disabilities or are at risk of developing disabilities from birth to two years of age.

cutoff criterion score of nine for a diagnosis of Autism Spectrum Disorder. Dr. Greenwald noted that the ADOS score was consistent with Claimant's performance on the Vineland-II Adaptive Behavior Composite. The results of this test showed that while Claimant had modest adaptive skill delays, these delays were not indicative of a developmental disability.

8. Dr. Greenwald's finding that Claimant does not have Autism Spectrum Disorder is supported by the conclusions contained in Claimant's Moreno Valley Unified School District Multidisciplinary Report, dated February 28, 2012, related to his Individual Education Plan. In this report, the multidisciplinary team, which included psychologist Roger Handysides, Ph.D., found that Claimant "displayed no behaviors or deficits that are typically characteristic or those seen in children on the autism spectrum." The team noted that Claimant appeared to be "a very friendly, intelligent four-year old boy" and that his educational needs could be met through the general educational program with typically developing children and that he no longer needed special education services.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is set forth in the Welfare and Institutions Code section 4500 et. seq.

2. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

3. In a proceeding to determine whether or not the previous determination that an individual has a developmental disability was erroneous, the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish that its previous eligibility determination was clearly erroneous by a preponderance of the evidence.

Authorities Regarding Substantial Disability

4. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

"Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of

Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. 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

6. Although IRC found Claimant eligible for regional center services based on Dr. Gross's 2010 report, Dr. Gross did not, in fact, conclude that Claimant was qualified for regional center services under the autism category under Welfare and Institutions Code section 4512. Dr. Gross "provisionally" diagnosed Claimant with autism and, in this sense, he deferred a determination that Claimant qualified for regional center services under the Lanterman Act. In 2014, based on Dr. Gross's request to reassess Claimant for autism, Dr. Greenwald found that Claimant did not have autism. In reaching this conclusion, Dr. Greenwald conducted a complete assessment of Claimant. Notably, Dr. Greenwald's finding was substantiated by the 2012 conclusion of Claimant's special education school multidisciplinary team. This team found that Claimant did not exhibit behaviors consistent with autism and did not qualify for special education services. The team described Claimant as "a very friendly, intelligent four-year old boy."

Considering these factors, IRC's 2010 decision to qualify Claimant for regional center services under the autism category was clearly erroneous.

ORDER

Claimant's appeal of IRC's determination that he is no longer eligible for services is denied. Claimant is no longer eligible for regional center services.

DATED: October 20, 2015

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.