

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016090257

DECISION

On February 15, 2017, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California.

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

Claimant's foster mother, her legal guardian, represented claimant who was present.

Oral and documentary evidence was introduced, and the matter was submitted on February 15, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) on the basis of a diagnosis of intellectual disability or any of the other four qualifying disabilities?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. Claimant is a three-year-old girl who has lived with her foster parents for the past 14 months. Claimant has been receiving Early Start services since July 29, 2016, based on her developmental delays. Early Start services terminated on September 11, 2016, her third birthday.

2. Sometime in August 2016, claimant's foster parents applied to IRC so claimant could obtain services under the Lanterman Act. In August 2016, IRC interviewed claimant's foster parents and performed an assessment on claimant to determine eligibility for services.

3. On August 29, 2016, IRC notified claimant that she was not eligible for regional center services based on a review of her records and her assessment because she does not have a disability that qualifies her to receive IRC services.

4. On September 2, 2016, claimant's foster parents filed a fair hearing request appealing IRC's decision.

5. On September 15, 2016, an informal telephonic meeting with claimant's foster parents and IRC was held to discuss claimant's status regarding eligibility for regional center services. On that date, IRC scheduled a psychological assessment of claimant on November 2, 2016, with Michelle Lindholm, Ph.D., in order to further assess her eligibility for regional center services. A continuance of the fair hearing was granted to allow for the additional assessment to be performed.

6. On November 2, 2016, Dr. Lindholm performed a psychological assessment of claimant to determine her eligibility for services. After the assessment, IRC determined that claimant was not eligible for service and this hearing followed.

## DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

7. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotypical patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of Autism Spectrum Disorder to qualify for regional center services under autism.

## DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

8. The American Psychiatric Association's DSM-5 contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: Deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

## TESTIMONY OF DR. LINDHOLM

9. Michelle M. Lindholm, Ph.D., is a licensed clinical psychologist. She was employed by IRC as a psychologist assistant in 2003; she became a clinical psychologist with IRC in 2011; she became a staff clinical psychologist and board certified analyst with IRC in 2014. Her duties in both positions include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services. Dr. Lindholm reviewed claimant's

records and performed a psychological assessment of claimant on November 2, 2016, and formed the opinion that claimant is not eligible for IRC services.

10. Dr. Lindholm testified that she performed a psychological assessment of claimant on November 2, 2016, and summarized her findings in her report. Her assessment included an interview of claimant's foster parents; a questionnaire completed by the foster parents; direct testing of claimant utilizing the Wechsler Preschool and Primary Scale of Intelligence 4th Edition (WPPSI-IV), Child Development Inventory (CDI), Autism Diagnostic Observation Schedule 2nd Edition- Module 1 (ADOS-2); document review of Early Start program reports<sup>1</sup> and school records; and observations of claimant.

In her report, Dr. Lindholm wrote that claimant was voluntarily placed in foster care by her biological mother, who was homeless and mentally ill. While her biological mother loved and held claimant, she did not provide an enriching environment, did not interact with, play with, talk to or teach claimant. At 28 months of age, claimant demonstrated a delay in her language. Claimant's foster parents reported that claimant stops and stares blankly several times per day. Dr. Lindholm wrote that the results of her assessment indicate that claimant "experienced delays in all areas of development with her most significant delay being in language skills." Dr. Lindholm testified and wrote in her report that the results of her assessment of claimant utilizing the WPPSI-IV test indicate that claimant has a mild delay in verbal comprehension and low average skills in visual spatial abilities. She stated that the results show that claimant's overall scores are

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<sup>1</sup> Dr. Lindholm explained that the Early Start services are provided for children who are at risk for developmental disabilities and show developmental delays of around 33 percent in one or more areas. Early Start services automatically terminate when the child reaches age three.

in the low average range and these results are inconsistent with an intellectual disability or a similar condition.

Dr. Lindholm further stated that the results of the CDI assessment demonstrate that claimant has moderate delays in social, self-help, gross motor, fine motor, expressive language, language comprehension, letters, numbers and general development. Additionally, the results of the ADOS-2 test demonstrated that claimant has minimal to no evidence of Autism Spectrum Disorder symptoms.

Dr. Lindholm noted in her report that the documents she reviewed show that claimant qualified for special education services under a diagnosis of a speech and language impairment and high to moderate perceptive and expressive language delay, and she is receiving direct intervention to address these problems. Dr. Lindholm concluded that claimant's adaptive skills are improving, but not yet at her age level. She further concluded that claimant's "behavioral presentation is consistent with a history of child neglect/environmental deprivation and current expressive/receptive language disorder, but not consistent with a diagnosis of Autism Spectrum Disorder.

11. Dr. Lindholm testified that claimant was not eligible for IRC services on the basis of intellectual disability or any of the other qualifying diagnoses because she did not meet the requirements of an intellectual disability or the other qualifying diagnoses and because she did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code of Regs., tit. 17, § 54001, subd. (a).) Dr. Lindholm explained that in order to have a diagnosis of intellectual disability under the DSM-5, a person would need to have onset during the developmental period before the age of 18 that includes both intellectual and adaptive functioning deficits meeting the following three criteria: (1) Deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for

personal independence and social responsibility (such adaptive functioning deficits limit functioning in one or more activities such as communication, social participation, and independent living); and (3) onset of intellectual and adaptive deficits during the developmental period. Dr. Lindholm concluded that claimant did not meet these criteria.

#### TESTIMONY OF CLAIMANT'S FOSTER MOTHER

12. Claimant's foster mother testified that she has had claimant in her home for the past 14 months. She stated that claimant was approved to receive Early Start services about two to three months prior to claimant turning age three and claimant received just over one month of services before those services were terminated. She stated that claimant benefited from those services and she saw improvement. Claimant's foster mother believes that further services from regional center would benefit claimant greatly.

13. Claimant's foster mother stated that claimant currently receives one hour per week of speech therapy through her school district. According to claimant's foster mother, claimant cannot communicate her needs or if she is injured. She stated that she has two other children in her home who play rough at times, and claimant will not communicate if she is hurt, hungry, thirsty or any other need, but she does mimic the other children. Claimant sometimes cries uncontrollably, and claimant's foster mother believes that claimant may have mental health issues given her familial history of mental health issues. She also stated that claimant has difficulty making direct eye contact with others or when you speak to her. Claimant's mother is in the process of obtaining a mental health assessment of claimant.

14. Claimant's mother testified that she believes that claimant demonstrates cognitive delays but is unsure of the source of the problems.

## THE PARTIES' ARGUMENTS

15. IRC argued that the records provided for their review and the psychological assessment performed by Dr. Lindholm failed to establish that claimant has any diagnosis and substantial disability that would qualify her for services from IRC.

16. Claimant's mother disagreed with IRC's position that claimant has no indicators to show that she is intellectually disabled or any of the other four qualifying disabilities and believes that she is substantially disabled such that she qualifies for services under the Lanterman Act.

## 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. Pursuant to 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<sup>2</sup>, 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.

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<sup>2</sup> Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replace it with “intellectual disability,” the California Code of Regulations has not been amended to reflect the currently used terms.



- (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 as defined under the Lanterman Act, the State of California, through the regional center, 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 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).)

9. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act. A school providing services to a student under an autism disability is insufficient to establish eligibility for regional center services. Regional centers are governed by California Code of Regulations, Title 17. Title 17 eligibility requirements for services are much more stringent than those of Title 5.

#### EVALUATION

10. Claimant’s foster mother believes claimant could be eligible for regional center services because she exhibited perceptive and expressive language delays, cognitive delays, and because she qualified for special education services from her school district. Claimant’s foster mother expressed her genuine desire to obtain the necessary services for claimant to maximize her potential. Her motives are sincere and commendable.

11. The information contained in claimant’s records and the assessment performed by IRC, however, does not support a reasonable belief that claimant has a developmental disability as defined by the Lanterman Act that would trigger IRC’s obligation to provide services to claimant. Claimant’s records and Early Start Services records show that claimant suffers from high to moderate perceptive and language delay, and neglect and environmental deprivation that affect her behavior and academic performance, but these disorders do not qualify claimant for regional center services.

12. Eligibility for special education services does not determine eligibility for regional center services. The Lanterman Act and the applicable regulations specify the criteria an individual must meet in order to qualify for regional center services. The regional center is statutorily required to use different criteria for eligibility than a school district. Additionally, the school district's determination that claimant is eligible for special education services on the basis of a diagnosis of high to moderate perceptive and expressive language delay is not a qualifying diagnosis for regional center services.

13. Claimant's foster mother was credible, her testimony heartfelt, and her frustration palpable. She is clearly motivated by her desire to help her child and to obtain the services she believes are necessary to allow her to function in the world; she undoubtedly has her child's best interest at heart. However, the preponderance of the evidence did not establish that claimant is eligible to receive services under the Lanterman Act based on any qualifying diagnosis. The weight of the evidence established that claimant does not have a condition that makes her eligible for regional center services.

## ORDER

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

DATED: February 24, 2017.

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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.**