

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2019070374**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 21, 2018, in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on August 21, 2019.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (autism)?

## **FACTUAL FINDINGS**

### **Background**

1. On June 6, 2019, IRC sent claimant's mother a Notice of Proposed Action stating that claimant, an 18-year-old boy, did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by IRC did not show claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.

2. On July 3, 2019, IRC received a Fair Hearing Request challenging IRC's eligibility determination. In the Fair Hearing Request, claimant's mother asserted that claimant had a diagnosis of autism and wanted claimant to be considered eligible for IRC services under that diagnosis.

3. Following an in-person informal meeting held between claimant's mother and IRC representatives on July 31, 2019, IRC adhered to its determination that claimant was not eligible for regional center services. A letter sent to claimant's mother following the informal meeting informed her of the hearing date, time, and location.

4. On July 11, 2019, OAH sent claimant's mother a Notice of Hearing, notifying her of the hearing date, time, and location.

5. On August 14, 2019, IRC sent to claimant's mother, via certified mail, a copy of the exhibits IRC intended to present at hearing and a list of witnesses IRC intended to call at hearing.

6. The matter was called for hearing at 10:30 a.m. on August 21, 2019. Prior to calling the matter for hearing, an attempt was made in the hearing room to contact claimant's mother telephonically. She did not answer the phone.

7. A finding is made that claimant's mother received proper notice of the date, time, and location of the hearing and failed to appear. The matter proceeded as a default.

### **Diagnostic Criteria for Autism**

8. 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 stereotyped 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 based on autism.

### **Evidence Presented at Hearing**

9. Paul Greenwald, Ph.D., has been a licensed psychologist since 1987. He is licensed in California and Florida. He has been a staff psychologist at IRC since 2008.

Dr. Greenwald has extensive experience in conducting psychological assessments of children and adults suspected of having developmental disabilities that may qualify them for regional center services. He also supervises psychological assistants who conduct similar assessments. Dr. Greenwald is an expert in the field of psychology, as it relates to the diagnosis of autism under the DSM-5 and the Lanterman Act. Dr. Greenwald testified at hearing concerning his review of records pertaining to claimant. The following is a summary of his testimony and records reviewed.

Records submitted and reviewed by Dr. Greenwald included: Individualized Education Program plans (IEPs) from 2008, 2009, 2016, 2017, 2018, and 2019; psychoeducational assessments completed by claimant's school district in 2008, 2009, 2017; a psychological evaluation completed by Larry Gaines, Ph.D., in 2009; a psychological assessment completed by Michelle Lindholm, Ph.D., in 2017; an occupational therapy assessment completed in 2017; and an eligibility determination from the East Los Angeles Regional Center completed in 2009, which found claimant ineligible for regional center services.

In 2008 and 2009, claimant received special education services under the category of specific learning disability. Upon review of claimant's 2008, 2009, and 2016 IEPs, Dr. Greenwald noted claimant's behaviors were more compatible with Attention Deficit Hyperactivity Disorder (ADHD) rather than autism. There was no evidence of the restricted or repetitive behaviors commonly seen with autism. The first time claimant qualified for special education under a diagnosis of autism was in his 2017 IEP, and thereafter. However, Dr. Greenwald explained that the criteria for autism for special education purposes is very different than the criteria for a diagnosis of autism under the DSM-5. Specifically, a person who qualifies for special education services under the category of autism for special education purposes need only exhibit "autistic-like"

features; whereas a person who qualifies for regional center services must demonstrate that he meets the more stringent diagnostic criteria for autism in the DSM-5 as well as have significant functional limitations in three or more major life activities.

Claimant's 2018 and 2019 IEPs did not show behavior consistent with autism; to the contrary, claimant showed significant attention-seeking behaviors and an awareness of his surroundings which is not typical of a person with autism. Most notably, the IEPs showed claimant had difficulty focusing and was very hyperactive, often getting up randomly in class or pacing around the room.

The 2008 psychoeducational assessment completed by claimant's school district, which was prior to qualifying him for special education services under the category of autism, did not contain any testing for autism.

The 2009 psychoeducational assessment completed by claimant's school district showed claimant was very aware of his surroundings and very talkative/interactive with those around him. Those features are atypical of a person with autism. On the Gilliam Autism Rating Scales, Second Edition (GARS-2), claimant's behavioral ratings placed him in the "very likely" category for autism. However, the school did not complete the Autism Diagnostic Observation Scale, Second Edition (ADOS-2), which is the gold standard of testing for autism and a more objective measure of a person's symptoms than the GARS-2.

In 2009, Dr. Gaines completed the ADOS-2, which showed claimant did not meet the cutoff for a diagnosis of autism. Much of the aggressive and hyperactive behaviors that had been noted in previous assessments and IEPs were noted in Dr.

Gaines's evaluation. Dr. Gaines ultimately diagnosed claimant with ADHD, Disruptive Behavior Disorder (NOS), and Borderline Intellectual Functioning.

In 2009, following the psychological evaluation completed by Dr. Gaines, the East Los Angeles Regional Center found claimant ineligible for regional center services under the diagnosis of autism.

In 2017, Dr. Lindholm completed a comprehensive psychological assessment of claimant for IRC. She reviewed and summarized all prior reports noted above in her assessment. Dr. Lindholm also administered several assessments designed to test claimant's cognitive skills, adaptive skills, as well as the ADOS-2. Claimant showed some delays in his cognitive and adaptive skills. However, claimant did not achieve a statistically significant score on the ADOS-2 and did not meet the cutoff for a diagnosis of autism. Dr. Lindholm explained that claimant had also been diagnosed in the past with depression, as well as visual and auditory hallucinations. Dr. Lindholm diagnosed claimant with Major Depressive Disorder with psychotic features.

Regarding the 2017 occupational therapy assessment, Dr. Greenwald noted that the behaviors reported in the assessment, like many behaviors noted in previous assessments, show claimant is extremely disruptive and noisy, and typically engaged in attention-seeking and intentionally oppositional behaviors; these behaviors are inconsistent with autism, which instead is characterized by more introspective behavior.

Based on the above, Dr. Greenwald concluded that the records presented did not show claimant is eligible for regional center services under a DSM-5 diagnosis of autism.

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## LEGAL CONCLUSIONS

### Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important

impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

5. California Code of Regulations, title 17, section 54000, provides:



(a) "Developmental Disability" means a disability that is attributable to mental retardation<sup>1</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.

(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

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<sup>1</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.

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 psychosocial 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. 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.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

## **Evaluation**

8. Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under a diagnosis of autism. The only expert who testified was Dr. Greenwald. Based on the records provided, Dr. Greenwald's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism. The ADOS-2 is the gold standard for assessing whether a person has autism, and claimant did not meet the cutoff for that diagnosis. Further, the behaviors exhibited by claimant are more consistent with ADHD or some other concern, as they appear to be mostly attention-seeking and intentionally oppositional, which is not typical of a person with autism. Finally, Dr. Lindholm completed the most recent assessment of claimant and concluded he met the diagnostic criteria for Major Depressive Disorder with psychotic features, which does not qualify a person for regional center services.

Accordingly, claimant is ineligible for regional center services.

## **ORDER**

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services is denied.

DATE: August 27, 2019

KIMBERLY J. BELVEDERE  
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 90 days.