

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter the Eligibility of:

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. 2014040317

DECISION

This matter came on regularly for hearing on May 14, 2014, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, in San Bernardino, California.

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

Claimant's mother, represented claimant. Claimant and claimant's father were also present for a portion of the hearing.

Oral and documentary evidence was received and the matter was submitted on May 14, 2014.

ISSUES

1. Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a diagnosis of autism?

2. Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of mental retardation?¹
3. Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of cerebral palsy?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. By letter dated April 2, 2014, IRC notified claimant's mother that claimant was not eligible for regional center services because claimant did not "have a 'substantial disability' as a result of Intellectual Disability (Mental Retardation), [or] Autism" and that he did not "appear to have a disabling condition related to mental retardation, or to need treatment similar to what mentally retarded people need."

2. On April 7, 2014, claimant's mother signed and timely filed a Fair Hearing Request appealing IRC's decision.

3. On April 21, 2014, the parties met for an informal meeting. They were unable to resolve the issues in the Fair Hearing Request and the matter proceeded to hearing.

4. At the start of the hearing, Ms. Pierce noted that between the informal meeting and the hearing date, claimant's mother raised an issue of whether claimant

¹ The Lanterman Act requires regional centers to provide services for individuals who have a developmental disability, including "mental retardation." The term "mental retardation" was recently replaced in the Diagnostic and Statistical Manual 5 with the term "intellectual disability." However, in keeping with the language of the Lanterman Act, the term mental retardation will be used in this decision.

had cerebral palsy. Ms. Pierce did not object to expanding the hearing issues to include whether claimant was eligible for regional center services based on a diagnosis of cerebral palsy as long as IRC would be able to call a witness, Dr. Borhan Ahmad, who had not been previously identified. Claimant's mother did not object to Dr. Ahmad testifying at the hearing.

OBSERVATIONS OF CLAIMANT AT THE HEARING

5. Claimant, a six year old boy, was present during portions of the hearing. He entered the room with his parents at the commencement of the hearing. It was immediately apparent that claimant was an energetic, rambunctious, fairly uncontrollable child with little ability to conform his behavior to the situation. On one occasion he opened the closed door to the hearing room and ran out of the room requiring his father to chase after him. Early in the hearing it was necessary to request that claimant and his father leave the hearing room to allow the proceeding to continue in an orderly fashion. Claimant and his father returned to the room during the hearing, but because claimant was unable to sit and speak quietly it was necessary to request claimant's father to remove him from the room again. They did not return, and the hearing proceeded.

BACKGROUND

6. Claimant's mother was on prescribed medication for bipolar disorder when she became pregnant with claimant. She reports that she stopped taking the medication when she learned she was pregnant. Claimant was born at an average weight.

Claimant resides with his parents, a sister and two half sisters. His sister is one year older than claimant, and she receives services from IRC under a qualifying diagnosis of mental retardation. Claimant's paternal half-brother has a genetic disorder and

receives residential care. Some of the records indicate that many of claimant's relatives have possible autism, mental retardation and/or cerebral palsy.

SCHOOL RECORDS PRESENTED AT THE HEARING

7. Claimant is eligible for, and has been provided, special education programming since 2011. Preschool psycho-educational testing was attempted by School Psychologist DeDe Aldama on two occasions in May 2011, when claimant was three and one-half years old; however, the tests were not completed "due to [claimant's] aggressive, destructive, and non-compliant behaviors." Eligibility for special education was based on information gathered from the tests and additional information obtained from claimant's parents in July 2011.

8. An Individualized Education Program (IEP) dated August 26, 2011, listed claimant's primary disability as Emotional Disturbance and listed a secondary disability as Speech and Language Impairment. The IEP summarized portions of the psycho-educational analysis conducted by Ms. Aldama. The IEP noted that claimant had "severe behavioral challenges." He was found to have "great difficulty following rules and behaving in a socially acceptable way." He was reported to be "extremely aggressive . . . hyperactive, and destructive in his environment."

Claimant's parents told Ms. Aldama that claimant had recently been diagnosed by a neurologist as having Autism Spectrum Disorder; however, Ms. Aldama did not concur in that assessment. The IEP summarized Ms. Aldama's analysis and noted that:

[Claimant had] at least average cognitive ability. He demonstrates a high level of creativity and problems solving capabilities. [Claimant] shows a definite awareness as to his surroundings and others in his environment. Mild deficits were noted in the areas of reciprocal social interaction and

communication. However, to this examiner, these behaviors appeared to be more purposeful, and to be more closely tied to a possible conduct disorder/emotional disturbance, than an Autism spectrum disorder. Assessment in the area of Autistic-like behaviors revealed minimal symptoms of Autism.

Claimant was found to be eligible for special education services as a child with an emotional disturbance. Claimant's parents signed the IEP.

9. In an IEP dated August 24, 2012, claimant's primary disability was Emotional Disturbance and his secondary disability was Speech and Language Impairment. In the category of "social behavior" it was noted that claimant was "able to attend to teacher directed tasks for 5-7 minutes and to self-directed tasks for approximately 10 minutes." In the "language/communication/speech" category it was found that claimant was able to speak in one to three word utterances. Claimant was in a regular class 20 percent of the school day and in a specialized class "to address delays related to Emotional Disturbance" 80 percent of the school day.

10. In a letter report dated December 5, 2013, an Education Specialist wrote that claimant had an "unsteady gait," that he had "been observed to fall while walking, and [had] fallen out of his chair from a seated position," and that he had "fallen off of playground equipment." The Education Specialist noted a "discrepancy between ability and achievement."

11. A Language, Speech and Hearing Assessment was performed by Speech-Language Pathologist Donna Roath, MS/CCC-SLP, in early 2014.² The speech-language

² The report is dated February 6, 2014; however, one assessment indicates it was administered in March 2014.

pathologist found claimant to be a “playful and happy student.” She determined that claimant had “difficulty understanding or using spoken language to such an extent that it adversely affect[ed] educational performance” and that the adverse effect “cannot be corrected without special education and related services.”

12. A psycho-educational assessment was performed by School Psychologist Erica L.H. Carlos, M.S. on February 25 and 27, 2014. The evaluation utilized eight different tests for intelligence, phonological processing, visual perception, and behavioral assessments. Ms. Carlos also interviewed claimant’s parents and teachers and reviewed his records.

The history notes of the assessment indicated that when claimant entered kindergarten he qualified for special education services due to Emotional Disturbance and Speech and Language Impairment and that he was transferred to a Behavioral Intervention Program after a few months. The assessment also noted that claimant had a diagnosis of Ataxic Cerebral Palsy, but it did not include the source of that diagnosis. Ataxic Cerebral Palsy is characterized by imprecision, instability and movements that are not smooth but appear disorganized or jerky.

Ms. Carlos determined that:

[Claimant], at this time, meets the eligibility criteria to qualify for services as a child with an Intellectual Disability with a significantly sub-average general intellectual functioning, consistent with deficits in adaptive behavior. This has impacted his educational performance, as indicated by sub-average academic scores. In addition, [claimant] has displayed autistic like behaviors including an inability to use oral language for appropriate communication, as well as a history of extreme withdrawal or relating to people

inappropriately and continued impairment in social interaction from infancy through early childhood.

13. In an IEP dated March 7, 2014, claimant's primary disability was originally typed in as "ED" for Emotional Disturbance, but it was interlineated, and "ID" for Intellectual Disability was inserted. It was noted that claimant can "attend to teacher directed tasks for 7-9 minutes in groups of 4 or less and attend for 5-7 minutes in larger whole class groupings." The IEP team noted that claimant's behavior was improving. A Behavior Support Plan devised for claimant by the school district team stated that behaviors displayed by claimant included: "Dropping to the floor. Physical Aggression: hit, kick, bite, scratch, spit, head butt. Playing in toilet: standing in toilet and flushing; hands in toilet."

REGIONAL CENTER EVALUATIONS

14. On January 28, 2013, Lorene Kaeding, Senior Counselor, Intake, for IRC performed a social assessment of claimant. She obtained most of claimant's background history and current behavior concerns from an interview with claimant's mother who reported that claimant had "meltdowns," displayed physical aggression, runs away, and that his behavior was dependent upon proper medication. Ms. Kaeding observed that claimant "seems to be a bright little boy. He was well-behaved today." Ms. Kaeding expressed a concern that claimant's mother may see him as more challenged than he actually was. She noted that claimant stood near her during the evaluation and showed her what he was doing and that he responded to his mother and made eye contact with her.

15. On February 25, 2013, Linh Tieu, DO, Medical Consultant for IRC, evaluated claimant for eligibility for regional center services based upon a medical condition. Dr. Tieu listed a number of behaviors reported to her including that claimant was "going

through manic episodes” and not sleeping; showing obsessive compulsive behaviors; engaging in head banging and body rocking; repeating sounds or words of others; running away; and preferring to play with adults and teens rather than other children. Following her medical examination of claimant, Dr. Tieu determined that claimant “does not satisfy medical criteria for eligibility for Regional Center Services based on cerebral palsy/epilepsy.”

OTHER MEDICAL PROFESSIONAL EVALUATIONS

Gregory Scott Aen, M.D.

1. On December 14, 2010, Gregory Scott Aen, M.D. examined claimant, who was then age two, pursuant to a request for a neurologic consultation regarding possible autism. Dr. Aen found claimant to be “a very oppositional and mild to moderately delayed young boy who does not use many words with the examiner.” Dr. Aen did not observe any abnormal movements and stated that “[g]ait examination is normal.” Dr. Aen believed that claimant had “an autistic spectrum disorder and most likely qualifies for a classic autism.” He felt that “[b]ecause there is a strong family history of developmental delay and mental illness, this raises a strong possibility that [claimant] and his siblings have an inherited genetic condition.” Dr. Aen prescribed medication for claimant to help control some of his aggressive behaviors. Dr. Aen performed a physical examination of claimant. There was no indication from his very brief report that Dr. Aen administered any psychological tests during his examination of claimant.

Borhaan Ahmad, M.D.

17. Dr. Ahmad, a certified pediatrician, testified at the hearing. He has been a clinical pediatrician with Loma Linda University Medical Center (Loma Linda) for over 17 years. Through Loma Linda, he has provided medical consultations for IRC for 15 years. Dr. Ahmad screens applicants to determine if they are eligible for regional center

services for medically related disabilities. He reviewed claimant's records, including reports of evaluations performed by Drs. Tieu and Aaen, to determine whether claimant was eligible for services based upon a diagnosis of cerebral palsy. Dr. Ahmad also had the opportunity to speak to and observe claimant when he was outside of the hearing room with his father.

Dr. Ahmad explained that cerebral palsy is a neurological condition that affects movement and muscle tone. He noted that there are various kinds of cerebral palsy, and the severity of cerebral palsy can vary between mild, moderate and severe. One form of cerebral palsy is Ataxic which means the individual has a loss of balance with intentional movement. Ataxic cerebral palsy generally involves the limbs and torso.

In Dr. Ahmad's opinion, claimant did not qualify for regional center services based upon a diagnosis of cerebral palsy. He noted that the medical evaluations performed in 2011 and 2013 did not diagnose claimant with cerebral palsy. During his interaction with claimant the day of the hearing, Dr. Ahmad asked claimant to run a short distance. Dr. Ahmad did not observe any symptoms of ataxia when claimant was playing with his father or when he ran.

Dr. Ahmad did not dispute that claimant could have a form of cerebral palsy; however, he stated that having cerebral palsy does not by itself make an individual eligible for regional center services. To be eligible for regional center services, the condition must present as substantially handicapping; the cerebral palsy must impact the individual's daily functioning, such as eating, dressing, and caring for his or her hygiene. Dr. Ahmad stated that he has observed many individuals with cerebral palsy who did not qualify for regional center services because the cerebral palsy did not present as a substantial handicap.

Paul Greenwald, Ph.D.

18. Paul Greenwald, Ph.D., a licensed clinical psychologist and staff psychologist for IRC, testified at the hearing. Dr. Greenwald obtained his bachelor's degree in 1974 from the University of Miami and received a doctorate in clinical psychology from the California School of Professional Psychology in 1987. From 2006 through 2008, Dr. Greenwald provided psychological services for individuals with developmental disabilities, including those on the autism spectrum and those with mental retardation. He has extensive experience identifying, evaluating, and developing treatment plans for persons diagnosed with or identified as being at risk for autism. Dr. Greenwald has served as a clinical psychologist with IRC since 2008. Dr. Greenwald was well qualified to evaluate and diagnose individuals with autistic disorder and/or mental retardation.

On March 4, 2013, Dr. Greenwald conducted a psychological evaluation of claimant. Dr. Greenwald evaluated claimant for autism and mental retardation; it is not within his expertise or training to evaluate claimant for cerebral palsy. In his assessment of claimant, Dr. Greenwald reviewed the education records and prior evaluations summarized above. He administered to claimant the Wechsler Preschool and Primary Scale of Intelligence – 3rd Edition (WPPSI-III), the Autism Diagnostic Observation Schedule (ADOS) Module 2 and the Child Development Inventory (CDI). He also observed and interacted with claimant on the day of testing, and he interviewed claimant's mother.

OBSERVATIONS OF CLAIMANT

19. Dr. Greenwald observed that, upon first meeting him, claimant made eye contact and reciprocated a "brief verbal greeting and social smile." He did not observe characteristics common in autistic children such as repetition of words, making up words, hand flapping or tiptoe walking.

COGNITIVE ASSESSMENT - WPPSI-III

20. The results obtained from Dr. Greenwald's administration of the WPPSI-III assessment "revealed mild cognitive delays but not to an extent indicative of Intellectual Deficit (mental retardation)." Claimant's Verbal Composite score was in the Low Average range, and his Performance Composite score was in the High Borderline range. In some subtests of the WPPSI-III, claimant performed in the Extremely Low category; however, in others, such as Matrix Reasoning, which measures novel and adaptive reasoning, claimant scored in the high range.

Dr. Greenwald reviewed and considered the cognitive assessments performed by school district personnel. He disagreed with the results of the psycho-educational evaluation conducted by Ms. Carlos in February 2014 because he felt she failed to consider scores obtained from the Wechsler's Intelligence Scale for Children – Fourth Edition (WISC-IV) that placed claimant in the low average range of intelligence. Dr. Greenwald stated that the scores obtained in Carlos' assessment were incompatible with a classification of mental retardation/intellectual disability. Instead, Dr. Greenwald stated that some of claimant's low scores, such as working memory, were more indicative of a diagnosis of ADHD.

Dr. Greenwald testified that it was not unusual for a child with behavior issues to "tank" on some of the tests administered. He felt claimant's inattention and somewhat uncooperative behavior exhibited during Ms. Carlos' testing should have been taken into account when analyzing the test scores. Additionally Dr. Greenwald noted that the working memory score obtained in the WISC-IV, may be wrong because it did not make sense in light of other scores. Dr. Greenwald further challenged the full scale IQ of 65 suggested by Ms. Carlos because the processing speed portion of the test could not be administered; he stated you could not get an accurate IQ score when one of the four tests was not given. Dr. Greenwald also discounted the scores obtained by Ms. Carlos in

the Kaufman Brief Intelligence test, Second Edition (KBIT-2) as this is, by definition, a brief test and not as comprehensive as the WPPSI-III.

21. Claimant's mother suggested that Dr. Greenwald permitted her to help claimant during Dr. Greenwald's testing and that, therefore claimant scored higher than he was capable of scoring on his own. Dr. Greenwald does not recall claimant's mother helping him but stated that he might allow a parent to assist a child in a practice question which would not contribute to an overall score. He further stated that if a child is given assistance with a response, he does not score that response.

22. Based upon the results of the cognitive testing, Dr. Greenwald determined that claimant was not eligible for regional center services based upon a diagnosis of mental retardation.

AUTISM ASSESSMENT - ADOS

23. Dr. Greenwald characterized the ADOS as the "gold standard" diagnostic tool for assessing and diagnosing autism and autism spectrum disorders. The ADOS is a research-driven observation tool that allows a clinician to interact with the individual as part of the assessment. Dr. Greenwald believes the ADOS is the best, most refined, and most objective tool for diagnosing autism.

Among other findings and observations, Dr. Greenwald noted that claimant "provided relevant responses to examiner inquiries and volunteered sufficient leads and other information for follow up questions." Claimant was able to have a conversation with Dr. Greenwald that included "consistently direct[ing the] examiner's attention to objects and activities," and using pointing gestures appropriately. Claimant "readily shifted his eyes from a whimsical wind-up toy to look and smile at examiner." As he pointed to objects, claimant gazed back to Dr. Greenwald to confirm that he was looking where claimant was pointing. Dr. Greenwald noted that claimant "enthusiastically and dynamically engaged in pretend telephone conversation" and that

he played with a family of dolls, miniature food items and home furnishings in a “conventional” way. Dr. Greenwald did not observe behaviors often found in children with autism.

Dr. Greenwald stated that some scores obtained in his assessment could be similar to those suggesting a diagnosis of autism, but they were not exclusive to autism and could be attributed to Attention Deficit Hyperactivity Disorder (ADHD). He questioned the reliability of Dr. Aaen’s statement that claimant had “an autistic spectrum disorder and most likely qualifies for a classic autism” because there is no indication in Dr. Aaen’s report that psychological tests were administered. Additionally, Dr. Aaen is a medical doctor, and medical doctors are not trained to administer and evaluate psychological tests.

Dr. Greenwald also questioned Ms. Carlos’ evaluation to the extent that she relied, at least in part, upon parent and teacher observations to determine that claimant had “autistic like behaviors.” He stated that it is possible to diagnose autism by observation, but he questioned whether it would be a valid diagnosis. He believed that observations by teachers and other untrained professionals could not result in a reliable diagnosis.

24. During cross-examination by claimant’s mother, Dr. Greenwald agreed that delays in the ability to effectively communicate, with the resultant inability to have personal needs met, could cause an individual to display aggressive behavior. However, Dr. Greenwald added that this reaction is not unique to an autistic child but could also be found in children diagnosed with ADHD or other conditions. Similarly, Dr. Greenwald agreed that a child running away could be an indicator of autism but added that it is not specific to autism and can be indicative of other diagnoses; he has seen children with extreme behaviors that are not related to autism. Dr. Greenwald confirmed that he observed claimant engage in self-stimulatory behaviors. He stated that he took those

behaviors into consideration when he scored claimant's tests. Dr. Greenwald denied opining that claimant could have a mental illness because claimant's mother had a mental illness.

Dr. Greenwald explained that, in order for claimant to become eligible for services under the Lanterman Act, he must have a qualifying disabling condition and the condition must constitute a substantial disability. Based on all the information provided and his clinical observations, Dr. Greenwald concluded in his report that claimant "*does not* meet criteria critical to a diagnostic determination of Autism *or* autism spectrum disorders. He evidenced three exclusively mild deficits/anomalies, one in the area of Communication and two more in Reciprocal Social Interaction, along with several areas of intact functioning."

EVIDENCE PRESENTED ON BEHALF OF CLAIMANT

25. Claimant's mother expressed understandable frustration in her efforts to obtain services for claimant. She testified that each agency she met with told her that claimant should be receiving services from the IRC. When she met with representatives from IRC, they told her that claimant does not qualify for regional center services. Claimant's mother believes that, because the school district classified claimant as "Intellectually Disabled," he should qualify for services. She stated that claimant does not know his alphabet, cannot count to ten, and does not know things that a "normal" six year old knows.

In the alternative, claimant's mother believed there have been sufficient suggestions from doctors and educational professionals that claimant is autistic, such that he should receive services from the IRC based upon autism. She noted that claimant self-stimulates, elopes from his classroom and school bus, removes his clothing in school and on the bus, soils himself, and needs assistance feeding himself. She provided evidence that claimant receives monthly services from In-Home Supportive Services for

bowel and bladder control, feeding, dressing and for protective supervision. She believes these factors are indicative of a diagnosis of autism and show recognition that claimant requires services in these areas. Claimant's mother stressed that she does "not want [claimant] to be autistic;" she just wants to help him.

Finally, claimant's mother recently learned that claimant may have cerebral palsy, and she asserted that claimant should be eligible for IRC services under the cerebral palsy category.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for 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. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) 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 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 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, 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 as defined under the Lanterman Act, the State of California, through the regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. 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.

EVALUATION

8. Claimant’s mother believed claimant is eligible for regional center services under the autistic, mentally retarded, and/or cerebral palsy categories of the Lanterman Act. Claimant has been found to qualify for special education services from his school district since 2011. The school district previously identified claimant as having an emotional disturbance but recently changed that identification and determined that he is “intellectually disabled.” Claimant’s mother was hoping that the change in the school’s

classification would mean that claimant could obtain services through the regional center. However, 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.

9. Although some doctors and educational professionals have suggested claimant “may” have autism, no competent evidence was presented at hearing to contradict Dr. Greenwald’s assessment that claimant did not qualify for regional center services under the autistic category.

10. Similarly, as relates to whether claimant is entitled to regional center services under the cerebral palsy category, Dr. Ahmad’s testimony was persuasive that, even if claimant had a diagnosis of cerebral palsy, he was not substantially disabled by the condition such that he would qualify under the Lanterman Act for regional center services.

11. Claimant’s mother was sincere, her testimony heartfelt, and her frustration palpable. She is clearly motivated by her desire to help her child and to obtain the services that she believes are necessary to allow him to function in the world; she undoubtedly has her child’s best interest at heart. However, the weight of the evidence demonstrated that claimant was not eligible for services under the Lanterman Act based upon a diagnosis of autism, mental retardation or cerebral palsy. The weight of the evidence established that claimant did not have autism, was not mentally retarded, and did not have a substantially disabling condition based upon cerebral palsy.

ORDER

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

DATED: May 29, 2014

_____/s/_____

SUSAN J. BOYLE

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.