

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Continuing Eligibility  
of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016090114

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 21, 2017.

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

Claimant's parents appeared on behalf of claimant, who was not present.

The matter was submitted on February 21, 2017.

ISSUE

Is IRC's previous determination that claimant was eligible for regional center services under the Lanterman Act based on a diagnosis of autism "clearly erroneous" today in light of the comprehensive reassessment completed by IRC?

## FACTUAL FINDINGS

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

1. 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 includes 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 under autism.

### CLAIMANT'S BACKGROUND

2. Claimant is a 12-year-old male who receives 24 hours per month of respite services through IRC based on a diagnosis of autism. Claimant suffers from diabetes and has difficulty caring for his medical needs independently. Claimant lives in a home with approximately 13 people. Claimant's mother administers 110 hours of In Home Supportive Services to claimant and is the payee for claimant's social security. According to claimant's Individualized Program Plan, he can engage in self-care when prompted by his parents and eats independently.

3. In July 2010, when claimant was six years old, an assessment was completed by Pantea Hannauer, M.D., who administered the Autism Diagnostic Observation Scale (ADOS), and found claimant to be just above the cutoff for autism. In other words, although his symptomology was mild, he met the criteria for autism.

4. Also in 2010, when claimant was six years old, Harbor Regional Center conducted a psychological evaluation. Several comprehensive assessments, including the ADOS, were administered. A diagnosis was deferred because claimant's parents did not complete the behavior questionnaires.

5. In January 2011, a second psychological evaluation was completed for Harbor Regional Center. Multiple assessments, including clinical interviews, were administered. Carol Bellamy, Ph.D., concluded claimant did exhibit some autistic-like features, but not at a level that would warrant a diagnosis of autism. The examiner concluded claimant presented with a diagnosis of Pervasive Development Disorder (PDD).

6. At some point, claimant began receiving services from IRC based on a diagnosis of autism. No documents provided at the hearing showed when or how claimant came into IRC's catchment area or why he began receiving services when the medical history made it unclear whether claimant actually had autism.

#### JURISDICTIONAL MATTERS

7. IRC Staff Psychologist Paul Greenwald, Ph. D., conducted a psychological reassessment of claimant in July 2016. Based on the overall comprehensive reassessment, Dr. Greenwald concluded that claimant no longer met the diagnostic criteria for autism and was no longer eligible for regional center services.

8. On August 16, 2016, IRC notified claimant that he was no longer qualified for regional center services under the Lanterman Act. Claimant timely filed a fair hearing request; this hearing ensued.

#### EVIDENCE PRESENTED AT HEARING

9. Dr. Greenwald 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 Lanterman Act.

10. Dr. Greenwald reviewed and considered the aforementioned documents prior to completing his reassessment. Dr. Greenwald's comprehensive reassessment included a clinical interview with claimant and administration of the Kaufman Brief Intelligence Test, ADOS, Childhood Autism Rating Scale (CARS), and Vineland-II Adaptive Behavior Scales. Dr. Greenwald testified at the hearing regarding his conclusions.

11. Dr. Greenwald found claimant's IQ to be in the superior range, which is inconsistent with autism.

12. Dr. Greenwald found only a seven point difference in claimant's verbal and nonverbal abilities, which he considered significant because in a child with autism, there should be a much greater variation in the verbal and nonverbal communicative abilities.

13. Dr. Greenwald did not find any features of autism on the CARS, but he did note some symptomology of fear and anxiety.

14. Dr. Greenwald did not assess claimant using the Vineland because claimant's parents did not complete the questionnaire.

15. On the ADOS, the "gold standard" in determining whether someone has autism, Dr. Greenwald also found claimant was below the cutoff for autism. He explained that, although claimant had some autistic-like features, claimant's score was seven, well below the cutoff range of 12. Claimant did have some deficits in certain areas; however, any deficits he had were mild. Claimant showed no evidence of restricted or repetitive interests, a hallmark feature of autism. Dr. Greenwald explained

that a score of seven on the ADOS in the past, under the DSM-4, would have yielded a diagnosis of PDD or Asperger's Syndrome. However, under the DSM-5, PDD and Asperger's no longer exist. Thus, while claimant qualified for regional center services in the past, he no longer meets the criteria for autism using the DSM-5.

#### TESTIMONY OF CLAIMANT'S PARENTS

16. Claimant's mother testified claimant has been an IRC consumer since 2010. Between the ages of three and seven, claimant received speech and occupational therapy at school. Claimant has Type 1 diabetes and requires special foods to keep his blood sugar consistent. The family struggles with claimant because he will say he wants a certain food, they will prepare his medication dosage consistent with that food choice; and then claimant will not eat the food, which affects his blood sugar. Claimant's mother described it as a "fight with him all the time."

Claimant's mother testified claimant has an extreme aversion to water and is resistant to bathing. She said he hates it so much that it is difficult to keep him well-groomed because he has to be forced into a bath. When it is raining, claimant will not go outside. At one point during the recent rain storms, claimant hid in his bed.

Claimant's mother took issue with Dr. Greenwald's observations, noting claimant was rocking, fidgeting, making facial movements, and grimaces during the exam, so she is unsure why they were not mentioned. She also said that Dr. Greenwald wrote that claimant called him by his first name, but claimant did not actually do that. She also said claimant does not use sarcasm, as noted in Dr. Greenwald's report; rather, he speaks literally. So, what one person views as sarcasm, she views as being literal.

Claimant's mother feels claimant has autism, and noted she has three other children with autism. She also feels Dr. Greenwald's diagnosis that claimant does not have autism is partially due to her and her husband not turning in the Vineland questionnaire.

Claimant's mother feels that IRC needs to wait until claimant is an adolescent to see how puberty will affect his autism as his classes in school become more challenging.

17. Claimant's father testified that claimant has persistent deficits in social and emotional reciprocity. For example, claimant will explain things from the "center" without giving background information, and if he is not understood, he gets frustrated. If something angers claimant, he will curl into a ball. Claimant also only wants to talk about what he wants to talk about and gets angry if anyone changes the subject. Claimant does not know how to regulate his voice – he is either too loud or too soft.

Claimant's father said claimant also has deficits in the nonverbal arena as well. Claimant cannot keep eye contact and uses inappropriate facial features. He also hates to be touched, or even hugged. If someone does touch claimant, he has a "meltdown."

Claimant's father said claimant has no friends and says he does not need them. Claimant's father explained that claimant has gone to great lengths – such as sleeping during the day – to change his schedule at home in order to avoid contact with the other people in the household.

Claimant's father testified claimant does exhibit repetitive behaviors such as opening and closing his mouth, squeezing his eyes shut, and snorting. He spins his arms. Claimant also likes to "do things" with liquid and has a fixation with locks. Claimant carries locks with him wherever he goes and is constantly trying to decode locks or anything that looks like a lock.

Claimant's father testified that he feels claimant qualifies for a diagnosis of autism based on the above.

#### DOCUMENTS SUBMITTED BY CLAIMANT'S PARENTS

18. Claimant's parents submitted a letter from Judy Anziano, who described herself as a "special education para educator" and "respite provider." She wrote she is familiar with claimant who is "unable to voice his needs" and "completely unaware he

needs help." She wrote he is not self-directing and is impaired in his speech and communication. She wrote claimant does become fixated on certain objects and when fixated on the object he closes off his awareness of his surroundings. Ms. Anziano provided details corroborating her observations.

19. Claimant's parents submitted a letter from Caroline Wilson, R.N., who expressed similar concerns as Ms. Anziano. She also wrote about similar observations that claimant's parents testified about. Ms. Wilson believes claimant has autism.

20. Claimant's parents submitted a letter from John Mace, MD. Dr. Mace wrote about claimant's battle with Type 1 Diabetes.

21. Claimant's parents submitted a handwritten letter from a person named "Susan." The rest of the letter was very light and illegible.

22. Finally, claimant's parents submitted a document entitled, "Assessment of Need for Protective Supervision for in Home Supportive Services Program." It did not contain any information relevant to these proceedings.

## LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at 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 a previous determination that an individual has a developmental disability "is clearly 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 by a preponderance of the evidence that its previous eligibility determination "is clearly erroneous."

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 also 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;

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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.



- (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. 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

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to be eligible for regional center services. Welfare and Institutions Code section 4643.5, subdivision (b), authorizes the regional center to reassess clients to determine if a diagnosis previously made is currently correct. That is to say, the issue is not whether a diagnosis made in the past was correct; but rather, the issue is: Given how the client currently presents, would that diagnosis be given today?

Dr. Greenwald completed a comprehensive assessment of claimant in July 2016, which yielded scores well below the autism cutoff. Dr. Greenwald also did not observe any persistent or repetitive behaviors; noted claimant's verbal and nonverbal abilities were similar; and claimant's IQ was in the superior range. Thus, even if claimant's parents had submitted the Vineland, the Vineland is a subjective assessment and would not change the nature of the objective results of the ADOS, CARS, and other assessments administered.

Dr. Greenwald also explained that claimant's earlier diagnosis was made under the DSM-4, which contained diagnoses of Pervasive Development Disorder and Asperger's Syndrome, commonly referred to as "high functioning autism." Today, the DSM-5 is used and no longer contains those diagnoses. Under the DSM-5, claimant does not meet the criteria for autism. No expert testimony was provided on behalf of claimant to contradict Dr. Greenwald's conclusion.

Although the documents provided by claimant's parents support the testimony of claimant's parents regarding claimant's unusual behaviors, the documents are administrative hearsay and cannot be used to make a finding of fact that claimant has autism. Moreover, the documents all contain unsupported opinions and do not contain any actual assessments or evaluations that were administered to contradict Dr. Greenwald's assessment that claimant does not meet the criteria for autism.

Claimant's parents were credible in their testimony and appear to want the best for their child. Claimant certainly appears to exhibit some unusual behaviors. However, if claimant's behaviors were attributable to autism, as opposed to some other disorder, the behaviors would be observable during a psychological assessment. Nonetheless, claimant did not display the typical behaviors noted in the DSM-5 as being consistent with autism during his assessment with Dr. Greenwald.

The prior determination that claimant was eligible for regional center services under a diagnosis of autism is therefore clearly erroneous, in light of Dr. Greenwald's comprehensive reassessment. As a result, claimant is no longer eligible for regional center services under the Lanterman Act.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that he is no longer eligible for regional center services is denied.

DATED: March 3, 2017

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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 ninety days.**