

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017040905

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on June 5, 2017.

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

Claimant's mother appeared telephonically on behalf of clamant.

The matter was submitted on June 5, 2017.

ISSUE

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

## FACTUAL FINDINGS

### DIAGNOSTIC CRITERIA FOR AUTISM

1. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. 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 an 11-year-old female. Claimant started receiving mental health services when she was 4 ½ years old, after she was diagnosed with Oppositional Defiant Disorder. Claimant also has diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Trichotillomania (pulling her hair out).

3. Claimant was evaluated for special education services at six years old but did not qualify at that time. Claimant was re-evaluated in 2017, and she now receives special education services under the category of Emotional Disturbance.

4. Following a May 27, 2016, assessment, claimant was diagnosed with autism by People's Care Autism Services. Claimant's mother applied for regional center services.

5. On March 2, 2017, Ruth Stacy, Psy.D., conducted a psychological assessment and determined claimant did not meet the diagnostic criteria for autism and

was not substantially disabled. Dr. Stacy concluded claimant was not eligible for regional center services.

6. On March 16, 2017, IRC notified claimant that she was not eligible for regional center services because the records provided to IRC and Dr. Stacy's assessment did not establish that she had an intellectual disability (autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment as an individual with an intellectual disability) that constituted a substantial disability.

7. Claimant's mother filed a fair hearing request on April 14, 2017; this hearing ensued.

#### REQUEST FOR CONTINUANCE

8. On the date of the hearing at 1:30 p.m., claimant's mother had not appeared. She had not contacted OAH or IRC to request a continuance. There was no record of any correspondence, electronic or otherwise, from claimant's mother. Claimant's mother was contacted from the hearing room. She initially stated she had hired an attorney and he was "supposed to" request a continuance. Neither IRC nor OAH has ever had any attorney of record on this case. When pressed further, claimant's mother stated she had contacted an attorney "a month ago" and he would not allow her to sign a retainer agreement until the attorney handling claimant's special education matters withdrew from that case. Claimant's mother, therefore, had not retained an attorney at the time of the hearing. Claimant's mother requested a continuance in order to retain an attorney.

9. OAH served claimant's mother with the Notice of Hearing on April 21, 2017. Additionally, IRC sent its hearing documents to claimant on May 30, 2017, which claimant's mother stated she received. Given that notice of hearing was proper, and a continuance was not timely requested, good cause to continue the hearing did not exist.

Claimant's mother was given time to prepare, and the hearing proceeded with claimant's mother appearing telephonically.<sup>1</sup>

#### EVIDENCE PRESENTED BY IRC

10. Dr. Stacy testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for over 27 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. She has also had training from Western Psychological Services in the administration of the Autism Diagnostic Observation Scale (ADOS) and training from IRC in the administration of the Autism Diagnostic Interview (ADIR). Dr. Stacy qualified as an expert in the diagnosis of autism and in the assessment of individuals for IRC services.

Regarding the May 27, 2016, assessment by People's Care, which diagnosed claimant with autism, Dr. Stacy pointed out that that the diagnoses was autism "without accompanying impairment, without accompanying language impairment, possibly associated with ADHD . . . ." Thus, even if clamant was autistic, she did not have the substantial disability requirement needed to qualify for services under the Lanterman Act. Dr. Stacy also pointed out that the report found claimant had a very low score in the

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<sup>1</sup> Claimant's mother was given the option of appearing in person, as IRC staff said they would wait if needed. However, claimant's mother stated she had a doctor's appointment for claimant so she would not be able to drive to IRC. IRC did not object to claimant's mother appearing telephonically.

area of restrictive and repetitive patterns, which is a hallmark of autism. Thus, claimant's lack of restrictive and repetitive behaviors also undercut a diagnosis of autism.

Regarding a January 27, 2017, psychological assessment completed by claimant's school district, Dr. Stacy testified that claimant's academic scores were average to low average and claimant's adaptive behavioral scores – as reported by both the parent and teacher – were both above the cutoff of what would be considered substantially disabled. On the Gilliam Autism Rating Scale, the parent rating showed "very likely" for autism while the teacher rating showed "unlikely." On the Scale for Assessing Emotional Disturbance, the parent rating showed "highly indicative" of emotional disturbance while the teacher rating showed "indicative." Dr. Stacy also noted that the report showed claimant exhibited different behaviors at school and at home; Dr. Stacy explained that if a person is truly autistic, they would exhibit the same behaviors in all settings. Overall, claimant was not assessed with autism or autistic-like criteria; rather, she was found eligible for special education services under emotional disturbance.

Dr. Stacy reviewed claimant's medical and psychological reports prior to conducting her own assessment. Dr. Stacy's assessment included the following: Autism Diagnostic Observation Schedule – Second Edition (ADOS-2), Module 3; Vineland Adaptive Behavior Scales – Third Edition; a diagnostic interview; and clinical observations. Dr. Stacy found claimant's communication skills to be good; she nodded, pointed, used gestures appropriately, gave reasonable accounts of events, used good eye contact, exhibited good social emotional reciprocity, and was very socially aware. On the ADOS-2, claimant scored a 4; well below the cutoff for autism. On the Vineland, claimant had low average to average intellectual functioning. Dr. Stacy did not observe any repetitive, odd, stereotypical movements, or self-injurious behavior. Claimant showed imagination and creativity during the assessment.

Dr. Stacy wrote the following in her report:

[Claimant] knows the value of a penny, nickel, dime . . . and she can combine coins to equal a specific amount. She makes small purchases. [Claimant] watches TV or uses the internet to obtain current information. She uses the clock to keep track of when to do something. [Claimant] can find a needed phone number. She keeps her personal belongings secure when away from home. She sometimes gets up on time when needed. [Claimant] operates technology to accomplish at least two kinds of tasks. She uses at least two social interaction technologies such as texting and hangout.

Based on her observations, a review of claimant's records, and her own assessment, Dr. Stacy concluded claimant did not meet the diagnostic criteria for autism under the DSM-5. Therefore, she was ineligible for regional center services. Dr. Stacy recommended claimant continue with the mental health services she is receiving for her prior diagnoses of ADHD, Disruptive Behavior Disorder, Anxiety Disorder, and Trichotillomania.

#### CLAIMANT'S MOTHER'S TESTIMONY

11. Claimant's mother said she believes claimant is autistic and does not want her daughter to get cheated out of services. Claimant's mother said, ever since receiving the diagnosis of autism from People's Care, claimant has been receiving Applied Behavioral Analysis services through her insurance and it has been helping.

12. Claimant's mother said although claimant receives special education services under the category of emotional disturbance, the school said claimant met the criteria for autism but that it did not matter and they did not need to put it on her

individualized education plan since she was receiving services under emotional disturbance. Claimant's mother did not have any documents to support her assertion.

13. Claimant's mother said that claimant's behaviors, such as pulling out her hair and picking at her skin, may be indicative of other psychological disorders but that the behavior is also a behavior consistent with autism.

14. Claimant's mother's testimony was sincere. She clearly has the best interest of her daughter at heart.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

### STATUTORY AUTHORITY

2. 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.

3. 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.*)

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

(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.

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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.



- (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.
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. The burden was on claimant to establish her eligibility for regional center services. Although the assessment by People's Care provided a diagnosis of autism, no expert testified regarding the assessment and diagnosis was directly contradicted by Dr.

Stacy's more recent assessment. Dr. Stacy found claimant did not meet the diagnostic criteria for autism and no recent evidence was presented to challenge Dr. Stacy's conclusion. Additionally, claimant has a long history of being treated for mental health services, which do not qualify her for regional center services under the Lanterman Act. Claimant also receives special education services under the category of Emotional Disturbance, which is a mental health concern – not a developmental disability. Finally, claimant had past diagnoses of ADHD, Oppositional Defiance Disorder, and Trichotillomania, which do not qualify her for regional center services.

Moreover, even if claimant did have autism, no evidence established that she has significant limitations in three or more major life activities as defined in California Code of Regulations, title 17, section 54000. Therefore, claimant is not eligible for regional center services under the Lanterman Act.

## ORDER

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

DATED: June 13, 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.**