BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2019090090

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 16, 2019, in San Bernardino, California.

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

Vanessa Espinoza, Deputy Public Guardian, County of Riverside, represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on October 16, 2019.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

Background

1. Claimant is a 31-year-old man. The following synopsis of claimant's recent background was obtained from a Functional Behavior Assessment completed on May 21, 2019, and July 23, 2019:

> Claimant arrived at Riverside Community Hospital on 12-24-18, completely incoherent. The hospital cared for him for nearly two months during which time he was nursed back to physical health but even after physically recovering he was unable to accurately communicate his name, date of birth, or any other survival information. The hospital then sent him to "Wilma's Board and Care" in Perris, CA on 03-25-19. He walked away from Wilma's on about 03-29-19 and was found by police lost and nonverbal wandering in traffic – he was transported to RUHS hospital in Moreno Valley. RUHS drove him back to Wilma's after checking his physical condition. Claimant walked away from Wilma's again on about 04-24-19 and a missing persons broadcast was put out. He was located again in Moreno Valley 3

> weeks later at midnight on 05-14-19. Ambulance personnel found him sitting on the street curb of a busy traffic area with his head down almost in a fetal type position. They took him to RUHS Mental Health on this day where he remained until about 06-17-19. He was transferred from RUHS Mental Health to [a senior center] in Hemet, CA on 06-17-19. He has attempted to walk away several times from [the senior center] . . . .

2. According to a social assessment completed by IRC Program Manager Mary Joseph-Bacon in July 2019, claimant is being assisted by the Riverside Police Department, Riverside County Department of Public Social Services – Adult Protective Services, and the Riverside County Public Guardian's Office, all of whom share concern for his health, safety, and well-being.

3. After an intake assessment, IRC obtained prior medical records and evaluations concerning claimant, and had a psychologist conduct a new assessment.

4. On August 1, 2019, IRC sent Ms. Espinoza a Notice of Proposed Action stating that claimant did not qualify for regional center services under the Lanterman Act because the intake evaluation and psychological assessment 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.

5. On August 21, 2019, Ms. Espinoza filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, Ms. Espinoza wrote that claimant's family stated claimant had been diagnosed with autism.

Diagnostic Criteria for Autism

6. The *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 to qualify for regional center services based on autism.

Intake Evaluation

7. Mary Joseph-Bacon has been a Program Manager with IRC for 25 years. She holds a Master of Arts degree in counseling and has over 40 years of experience working with the developmentally disabled population. Ms. Joseph-Bacon testified at the hearing. The following is a summary of her testimony, and the social assessment she completed on July 26, 2019.

Claimant's case was considered a high profile case because he was found in a homeless encampment and has had many challenges over the past six months. There are also several social service agencies involved trying to obtain help for claimant, as they were "heart-wrenched" about his story.

When Ms. Joseph-Bacon met claimant on July 26, 2019, she found him to be very fluid, able to establish a rapport, able to speak about where he would like to live, able to talk about his social life, and generally engage in productive expressive and receptive communication. Ms. Joseph-Bacon found it odd that he was able to communicate in such a productive manner because she knew he had basically been homeless and found in a catatonic state in December 2018.

Documents obtained showed claimant had been hospitalized in the past for schizophrenia, unspecified neurocognitive disorder, unspecified trauma and stressor disorder, anxiety, psychosis, selective mutism, and Attention Deficit Hyperactivity Disorder (ADHD). Claimant was referred to an IRC psychologist for a psychological assessment.

Prior Medical Records and Assessments

8. On July 1, 1996, when claimant was seven years old, claimant's school conducted a psychological evaluation. The purpose of this assessment was because claimant was having behavioral problems. The school psychologist reviewed claimant's records, obtained information from claimant's teachers, interviewed claimant, and conducted a drawing test and the Rorschach Inkblot Test (inkblot test). Claimant was determined to have "average cognitive potential." Claimant's cooperation during the assessment was good but claimant displayed poor articulation. Claimant did not take responsibility for getting in trouble and blamed his behavioral problems on other students. Claimant repeatedly told the assessor that he worried about his mother getting hurt (when there was no reason for him to bring up the subject). Claimant displayed a preoccupation with personal safety. Claimant denied hallucinations. Claimant was well-oriented to date and time.

During the drawing test, the assessor found "gross distortions and omissions." Claimant's drawings suggested difficulty "with the concept of himself and with interactions with those around him." During the inkblot test, claimant showed "serious psychopathology." Claimant appeared to have a marked "distortion of reality." The assessor did not note why these conclusions were drawn from claimant's responses on either the drawing test or the inkblot test (i.e., the report is conclusory and does not contain raw data). Based on the overall evaluation, the school psychologist determined claimant to be "severely emotionally disturbed."

9. A January 23, 2015, document purported to be a "summary of a Complete Psychiatric Evaluation." It did not contain any testing or raw data. Claimant's chief complaint at the onset of the evaluation was that he believed he had "ADHD and schizophrenia." Claimant reported that since he was a young child he had had "troubles" and was diagnosed with "ADHD and schizophrenia." Claimant reported he "sees things that other people do not." Specifically, claimant reported seeing faces of people and shadows that he could not explain. Claimant also reported that he often hears noises, voices, and people singing. Claimant sometimes felt that the people he saw were after him and posed a danger to him. Claimant was determined to be "actively psychotic" with a "longstanding schizophrenic illness" and diagnosed with "Schizophrenic reaction, chronic, paranoid type, not in remission."

10. On April 24, 2017, when claimant was 28 years old, Alicia Hansen, Ph.D., performed a psychological evaluation on claimant. Dr. Hansen administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS) and the Wechsler Memory Scale (WMS). On the WAIS, claimant's overall cognitive ability fell "within the borderline range of functioning, with schizophrenia." On the WMS, claimant's scores

showed "memory impairments." Dr. Hansen's diagnostic impressions were "schizophrenia" and "depressive type."

11. A collection of medical records dated October 19, 2015, through October 24, 2015, from the Antelope Valley Medical Hospital show claimant to have a diagnosis of schizophrenia. According to the records, claimant's mother reported that he was attempting to step out in front of vehicles and was not eating because he had stopped taking the medication prescribed to alleviate the symptoms of his schizophrenia. Claimant presented as anxious, depressed, non-verbal, and with "gross psychotic decompensation," hallucinations, and paranoia. Claimant's mother reported that claimant had been living with his brother in Texas for about seven months prior to October 2015. While in Texas, claimant suffered a "breakdown" and was found to be wandering in the streets severely dehydrated. He was taken to a medical facility in Texas where he was diagnosed with schizophrenia and given medication. There is also a family history of schizophrenia on claimant's father' side. Hospital personnel "highly recommended" claimant be held for at least a 72-hour evaluation (5150 hold).

While claimant was in the hospital, he attempted to leave several times. Security had to be placed by his bed. At one point when claimant attempted to run out of the hospital, he fought with security. After medical professionals were able to medicate claimant with anti-psychotic medications, claimant reported improvement in hallucinations and paranoia. The hospital discharged claimant to his mother and referred him for ongoing mental health treatment.

12. A collection of medical records from the Riverside University Health System were submitted. The records span from May 12, 2019, to May 28, 2019. The records describe claimant as homeless, and having been found at the scene of an accident sitting on a curb. It was unknown if claimant was injured or a party in the

accident, as he would not give any information. Upon admission, claimant was given a diagnosis of "Adjustment Disorder, Unspecified Type." Claimant was nonverbal and would only state his name, which was not his correct identity.[1] Claimant was placed on a "5150 hold." His behavior was "evasive, guarded, and uncooperative." Claimant was described as nodding yes or no to questions on occasion, but "internally preoccupied or distracted." No testing for autism was administered. There was one comment in progress notes dated May 14, 2019, where a police detective told medical staff that claimant was a missing person who was "known to be selectively mute and suspected to be intellectually disabled or autistic." Upon discharge, claimant was given a diagnosis of autism but placed on psychotropic medications. None of the records indicate how a discharged admission of autism was obtained.

13. A Functional Behavior Assessment dated July 25, 2019, documented claimant's extensive history of eloping from homes, and difficulty providing even basic information. The assessment, which was an interview of claimant, noted that claimant was unable to proficiently use picture cards to answer questions. Claimant was susceptible to leading questions and often gave conflicting answers. Overall, claimant was determined not to have the skills necessary to get himself home should he become separated from caregivers. The conclusion of the assessment was that claimant needed to be in a "Level 3" community care facility, which is a facility that could provide more care, supervision, and training to assist claimant with his self-care and to keep him safe.

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[1] A document was submitted showing that, over the years, claimant's medical records identify him by many different aliases.

Assessment of Sara deLeon, Psy.D.

14. Dr. deLeon has been a licensed psychologist since 2007. She holds a Doctor of Psychology in Clinical-Community Psychology; a Master of Arts in Psychology; and a Bachelor of Science in Psychology. Dr. deLeon has been conducting assessments for IRC since 2008. Prior to that, Dr. deLeon worked for the Counseling Team International where she provided psychological testing and pre-employment screenings for law enforcement, probation, and fire departments, and administered counseling services to personnel of government agencies. Dr. deLeon correctly cited the eligibility criteria for regional center services under the Lanterman Act and displayed mastery of the subject matter. Dr. deLeon is an expert in the assessment of individuals for purposes of determining eligibility for regional center services. The following is a summary of her testimony concerning the assessment she conducted on claimant on July 26, 2019.

Dr. deLeon reviewed the medical records and assessments in claimant's file; interviewed claimant; and conducted the Comprehensive Test of Nonverbal Intelligence, Second Edition (CTONI); the Autism Diagnostic Observation Scale, Second Edition, Module 4 (ADOS); and the Vineland Adaptive Behavior Scales, Third Edition (Vineland). The following summary is taken from Dr. deLeon's testimony and her report.

Dr. deLeon explained that she was unable to complete the CTONI because claimant had difficulty focusing on the measure. Claimant would look off to the side and spontaneously start smiling and chuckling. Claimant appeared to be responding to some sort of internal stimuli, which is common in psychiatric diagnoses. At times, claimant would be lucid; at other times, he would gaze off into the distance. Although Dr. deLeon was not able to finish the measure, she noted that claimant displayed a

"general fund of knowledge that is not suggestive of nor consistent with intellectual disability, a condition similar to an intellectual disability, or autism spectrum disorder." On the ADOS, claimant tested firmly within the non-autism spectrum range. The Vineland showed claimant had low adaptive skills.

Based on her assessment and review of claimant's records, Dr. deLeon did not consider claimant as meeting the diagnostic criteria for autism. She further explained that symptoms of autism do not "wax and wane" the way claimant's personality does; the records showed, overall, that claimant had periods of lucidity and periods of being in almost a catatonic state. These features are more indicative of a psychiatric/mental illness than a developmental disorder like autism.

Testimony on Behalf of Claimant

15. Shirley Jackson is the Supervising Deputy Public Guardian and testified at the hearing. Ms. Jackson testified that the Public Guardian is a county office that acts, among other things, as conservators for individuals who cannot manage their own affairs. Ms. Jackson said that, other than the records provided (as described above), the Public Guardian did not have any further information concerning claimant.

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[2], 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.

[2] 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."

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. A preponderance of the evidence did not establish that claimant is eligible for regional center services. The only expert who testified was Dr. deLeon. Based on the records provided, Dr. deLeon's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism, and even if he had claimed eligibility under any other category, the records did not show he suffers from an 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.

It is clear, based on this record, that claimant is in serious need of mental health services to keep him safe. He has a longstanding diagnosis of schizophrenia, and the documented behaviors he displays (ranging from moments of lucidity, to virtually a total catatonic state), are consistent with mental health/psychiatric challenges as opposed to a developmental disability like autism. On the ADOS, administered by Dr. deLeon, claimant tested well outside of the autism range. The records provided were replete with references to claimant having hallucinations, hearing voices, and being paranoid. Even the earliest record submitted, from 1996, showed claimant's school psychologist characterized him as "severely emotionally disturbed." Conversely, there is nothing in the records that show the hallmark feature of autism (restricted repetitive and stereotyped patterns of behavior, interests, or activities). While claimant does have deficits in social communication and social interaction across multiple contexts, it appears that they vary depending upon whether he is on his psychiatric medications, and are secondary to his schizophrenia.

As the Lanterman Act is designed to provide services and supports to individuals with specified developmental disabilities, and conditions that are

psychiatric in nature do not qualify, claimant does not meet the eligibility criteria for regional center services.

ORDER

Claimant does not have 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. Accordingly, claimant's appeal is denied.

DATE: October 22, 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.