

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2021050725

DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 6, 2021, telephonically pursuant to the ongoing COVID-19 pandemic.

Senait Teweldebrhan, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on July 6, 2021.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Act (Lanterman Act) under the categories of autism spectrum disorder (autism) or intellectual disability?

FACTUAL FINDINGS

Background

1. Claimant is a four-year-old child who lives with her parents and three siblings. Claimant's mother is her authorized representative.

2. On September 10, 2020, a multi-disciplinary team from IRC comprised of a doctor, psychologist, and program manager, met to discuss and review claimant's records. They concluded that claimant suffered from some challenging behaviors, but her cognitive level of functioning was average, and thus, she did not qualify for regional center services under autism or intellectual disability. No evidence was submitted, in support of, and eligibility was not requested based on, any other qualifying category.

3. On May 11, 2021, IRC sent claimant's mother a Notice of Proposed Action stating that claimant did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by IRC did not show claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.

4. On May 17, 2021, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination. On May 25, 2021, and July 1, 2021, OAH and the service agency sent claimant notices of the date, time, and instructions for joining the hearing conducted through Microsoft Teams. After 30 minutes from the start of the hearing, claimant's mother had not called into the conference line. Notice of the hearing was proper, and the hearing proceeded without claimant's appearance.

Diagnostic Criteria for Autism

5. 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 patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Diagnostic Criteria for Intellectual Disability

6. The DSM-5 contains the diagnostic criteria used for intellectual disability. The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range (unless an individual is African American, in which case IQ

results are not considered). In order to have a DSM-5 diagnosis of intellectual disability, three diagnostic criteria must be met. The DSM-5 states in pertinent part as follows:

Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

[¶] . . . [¶]

Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance.

[¶] . . . [¶]

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Deficits in adaptive functioning (Criterion B) refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and socio-cultural background.

Adaptive functioning involves adaptive reasoning in three domains: conceptual, social, and practical. The conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior and school and work tasks organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting general medical conditions or mental disorders influence adaptive functioning.

[¶] . . . [¶]

Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the

intellectual impairments described in Criterion A. Criterion C, onset during the developmental period, refers to recognition that intellectual and adaptive deficits are present during childhood or adolescence.

Substantial Disability

7. In addition to having a qualifying diagnosis, a person must also be substantially disabled as a result of that diagnosis in three or more areas of a major life activity, pursuant to California Code of Regulations, title 17, sections 54000 and 54001. These areas are: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Expert Testimony and Claimant's Records

8. Holly Miller-Sabouhi, Psy.D., is a licensed clinical psychologist. She obtained her doctorate in clinical psychology in 2009 from University of La Verne. She also has a Bachelor of Arts in Psychology and a Master of Science in Psychology. Dr. Miller-Sabouhi has been a staff psychologist at IRC since 2016, where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Prior to that, she served as a clinical psychologist at Foothills Psychological Services, and a clinical supervisor and mental health clinician at Olive Crest. She has been involved with many professional presentations in the field of psychology, and attended countless trainings and workshops in her field. Dr. Miller-Sabouhi is an expert in the field of psychology, and in the evaluation of an individual for regional center services under the Lanterman Act and applicable regulations.

9. The following records were provided to IRC by claimant's mother: Early Start Individualized Family Service Plan (IFSP) initial, supplemental and progress reports; ABC Interventions Inc. (ABC) annual report of progress; and Inland Empire Health Plan (IEHP) authorization letter. In addition, IRC provided an evaluation of claimant that was conducted by a clinical psychologist at AB Psych Consulting (AB Psych). IRC also submitted its own determinations. Dr. Miller-Sabouhi reviewed all of these records and concluded claimant was not eligible for any further intake services or regional center services. The following is a summary of the testimony of Dr. Miller-Sabouhi and the records noted above.

10. January 26, 2018, Early Start IFSP initial and supplemental reports: According to this document, completed when claimant was seven months and 11 days old, she was found eligible for Early Start services based on her cognitive delay, communication/expressive language delay, and social/emotional delay. She scored 51 in cognitive domain, which is a significant delay; 59 in communication/expressive language domain, which is a significant delay, and 86 in communication/receptive language domain, which is low average and not a significant delay; 79 in gross motor domain, which is not in a range of significant delay; and 60 in social/emotional domain, which is a significant delay. Claimant had variability in her scores, whereby in some areas of functioning she was "pretty low for her age," and in other areas "were not identified as a concern at the time." As such, claimant was recommended to receive two hours, per session, per week in Early Start services for her areas of deficit. The IFSP initial and supplemental reports did not contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

11. Claimant's December 15, 2018, ABC annual report of progress: According to this document, claimant was 18 months of age. Her scores on the Developmental Assessment of Young Children, Second Edition (DAYC-2), showed her scores were 85 in social/emotional domain, which is an average range; 95 in cognitive domain, which is an average range; 85 in receptive communication, which is a low average range; 101 in gross motor, which is an average range; and an ineligible score in expressive language domain, but likely a score in a low range based on her testing pattern. Claimant appeared to have a "good amount of progress from the first IFSP assessment to now." In addition, her testing levels were in line with her current age. The only area of delay was in expressive communication. The ABC annual report of progress did not contain any information that indicated claimant had a qualifying condition for regional center services, nor did it contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

12. June 7, 2020, IEHP authorization letter: According to this document, under the authorization header, it indicates the claimant had a diagnosis of "autistic disorder." The letter does not provide any explanation showing how this diagnosis was derived or what type of evaluation took place in order to come to this diagnostic conclusion. It is also noted that "autistic disorder" does not exist in the DSM-5.

13. July 22, 2020, IFSP progress/closing report: According to this document, claimant had just turned three, and she was tested about two months earlier. She scored 95 in the social/emotional domain, which is average range; 100 in adaptive self-help domain, which is average range; 94 in fine motor domain, which is average range; 92 in cognitive domain, which is average range; 79 in expressive language domain, which is lower than other scores but no a substantial delay; 73 in receptive language

domain, which is close to a significant deficit but not quite; and 99 in gross motor domain, which is average range. Her scores demonstrated “a lot of progress on claimant’s part from when she started to receive intervention” and “all of her scores are where you want them to be with exception of language although they are not significant deficits.” The report also references that mother reported claimant was receiving applied behavioral analysis (ABA) services in the family home, but she “does not have any documentation nor is she aware of any official diagnosis of developmental disability.” The IFSP progress/closing report did not contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

14. September 10, 2020, IRC eligibility determination: According to this document, claimant was found to not be eligible for any of the categories of eligibility, which include intellectual disability, autism, cerebral palsy, epilepsy, and the “fifth category.”

15. April 5, 2021, evaluation of claimant by Anthony Benigno, Psy.D., a clinical psychologist at AB Psych: According to this document, claimant was three years and nine months old, and the following is a summary of the assessments conducted during the evaluation.

- Adaptive Behavior Assessment System, Third Edition (ABAS-3): This parent/caregiver form was completed by claimant’s parent. There was a lot of variability with some areas where claimant’s adaptive behavior was average and low average, which is typical, and some areas where she had weaknesses, such as community use and health and safety, which were in the extremely low range. This suggested there were some areas where claimant could be doing better, but in most areas she was doing fine and there were

no areas of significant concern. When looking for a qualifying intellectual disability, there typically are substantial deficits across both cognitive and adaptive behavior, but we do not see that here.

- Childhood Autism Rating Scale, Second Edition (CARS2-ST): This "autism index" contains 15 categories. The individual category scores can be 1 or 1.5 (no concern or age-appropriate behavior), 2 (mild concern), or 3 (moderate level of concern). A total score of 15 to 29.5 indicates minimal to no symptoms; 30 to 36.5 indicates mild to moderate symptoms; 37 and higher indicates severe symptoms. In the "listening response," claimant scored 2, possibly due to her parent reporting some kind of concern even though she tested appropriately. In "verbal communication," claimant scored 2, which was a cause of some concern because her Early Start assessments also showed a language delay. In "non-verbal communication," claimant scored 3, which highlighted her ADOS-2 results, whereby she had some difficulties expressing herself non-verbally. Claimant's total score was 21.5, which falls in the minimal to no symptoms range, and typically indicates the criteria for a clinical diagnosis of autism has not been met.
- Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV): In this assessment, several subtests are administered. On the verbal comprehension index, claimant scored 98, which is average; on the visual spatial index, she scored 100, which is average; and her full-scale IQ score was 102, which was average. "These results argue against the presence of an intellectual disability, and instead show that she is developing the way that she should be developing."

- Overall, Dr. Benigno determined that claimant had no diagnosis. She had a low probability of autism with deficits in social affective functioning but no repetitive behaviors, whereby an autism diagnosis was not appropriate. She also exhibited no evidence of an intellectual disability. As such, claimant was not recommended to receive any regional center services.

Claimant's Evidence

16. Claimant did not submit any supporting evidence on her behalf.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman 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 of Developmental Services 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 retardation¹, 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.

¹ 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.

(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 under the categories of autism or intellectual disability. The only expert who testified was Dr. Miller-Sabouhi. Based on the records provided, Dr. Miller-Sabouhi's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism or intellectual disability, and is not substantially disabled within the meaning of applicable law. Although claimant has had some challenges, as evidenced by her need for Early Start services, the overall record details some difficulty with verbal and non-verbal communication (IFSP initial,

supplemental, and progress reports, ABC annual report of progress, and AB Psych assessment), but the criteria for a clinical diagnosis of autism was not met and her scores argued against the presence of an intellectual disability. In fact, her scores showed that she was developing the way that she should have been developing.

9. Accordingly, on this record and in light of applicable law, claimant's request for regional center services must be denied.

ORDER

Claimant's appeal is denied.

DATE: July 14, 2021

JAMI A. TEAGLE-BURGOS
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.