

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022050842

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by Zoom conference on June 21, 2022.

Stephanie Zermeño, Fair Hearings Representative, represented Inland Regional Center (IRC).

Claimant's mother represented claimant and was assisted by a court-certified Spanish-language interpreter.

The record was closed, and the matter submitted for decision on June 21, 2022.

ISSUE

Is claimant eligible for regional center services under the category of autism or intellectual disability pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Background

1. On March 2, 2022, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant, a nine-year-old boy, that he was not eligible for regional center services. Subsequently, the team received and reviewed an additional psychological evaluation but adhered to its original determination that claimant did not meet the criteria for regional center services.

2. On March 13, 2022, IRC sent claimant a Notice of Proposed Action stating that its eligibility team found that claimant did not have a "substantial disability" as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

3. Claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination.¹ This hearing followed.

Diagnostic Criteria for Autism

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism spectrum disorder (ASD). 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 ASD to qualify for regional center services based on autism.

Diagnostic Criteria for Intellectual Disability

5. The DSM-5 also identifies criteria for the diagnosis of intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: deficits in intellectual functions, such as reasoning,

¹ The request was completed in Spanish but indicated that claimant's primary care doctor declared that claimant needs help eating, bathing, dressing, and using the bathroom. For purposes of this hearing, the request was construed broadly to be a request for eligibility under any qualifying category.

problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range. 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.

Evidence Presented at Hearing

6. Sandra Brooks, Ph.D., is a licensed clinical psychologist. She obtained her doctorate in clinical psychology in 2006 from Loma Linda University. She also has a Bachelor of Arts in English and psychology and a Master of Science in experimental psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, 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 psychological assistant at IRC from 2007 to 2009. Prior to that, she served in multiple positions across the country. She has been involved with many professional presentations in the field of psychology and attended countless trainings and workshops in her field. Dr. Brooks is an expert in the field of psychology, as it relates to the diagnosis of autism and intellectual disability under the DSM-5 and the Lanterman Act. Dr. Brooks testified at hearing concerning her review of records pertaining to claimant. The following is a summary of her testimony and records reviewed.

7. Claimant's school district completed an Individualized Education Program (IEP) on May 7, 2021, when claimant was eight years old. Claimant was determined to

be eligible for special education services under the category of Other Health Impairment (OHI) based on symptoms that were “highly indicative” of attention-deficient hyperactivity disorder (ADHD). The IEP stated that claimant was highly energetic, constantly on the go, hyperactive, and impulsive, which adversely affect his educational performance. The report also indicated that claimant “has a great relationship with everyone in his class,” was kind and funny, and not afraid to make conversation with his peers.

Dr. Brooks testified that individuals with ASD have difficulty in social interactions, initiating and sustaining conversations, exhibiting empathy, and understanding humor. The assessment that claimant gets along with others, understands humor, and does not have difficulty in conversations is inconsistent with a person who has ASD. Dr. Brooks noted that claimant is receiving special education services under the OHI category and not autism. This is significant because the diagnostic criteria for receiving special education services for autism is less stringent than under the DSM-5 and Lanterman Act. Finally, ADHD is not a qualifying condition for regional center services.

8. As part of the IEP process, the school district completed a Multidisciplinary Assessment Report on May 7, 2021, based on claimant’s mother’s concerns about claimant’s social-emotional and behavioral development, and belief that claimant might have autism. The school psychologist conducted a comprehensive assessment that involved behavioral observations and diagnostic testing. Claimant was administered multiple tests to assess cognitive abilities in multiple domains; academic abilities; oral language abilities; and social-emotional development. Based on this testing and observations during the assessment, the school psychologist determined that claimant has average cognitive functioning, represented by a total score of 97.

Several tests administered to assess autism indicated that claimant did not meet the criteria for special education services under this category. However, because claimant exhibited multiple symptoms associated with ADHD, he was deemed eligible for special education services under the OHI category.

Dr. Brooks noted several features from the report. No developmental delays were noted during early childhood. The evaluator noted claimant was comfortable and at ease during the testing sessions. Claimant answered questions appropriately, made appropriate eye contact, and did not engage in any inappropriate behaviors except for overactivity. However, this overactivity did not result in difficulty in completing tasks in one sitting. The evaluator observed claimant playing with his peers during recess. Claimant could tell the evaluator about things that interested him and displayed a good vocabulary. During the six hours of evaluation, no autistic behaviors were observed. Dr. Brooks noted that these social interactions were inconsistent with a person with ASD. Moreover, the evaluation indicated that claimant presented with age-appropriate self-help skills and could care for his personal needs in all settings. Finally, Dr. Brooks testified that the report showed no indication that claimant has an intellectual disability based on his overall average intelligence. Thus, Dr. Brooks concluded that the evaluation does not support a belief that claimant is eligible for regional center services.

9. Claimant underwent a psychological evaluation by Krystle Frazier-Philo, Ed.D., a licensed psychologist, on December 10, 2021. The evaluation was conducted based on a referral by claimant's health insurance. Dr. Frazier-Philo administered multiple diagnostic tests and diagnosed claimant with ASD-level 2.

Dr. Brooks highlighted several areas regarding the evaluation. First, the evaluator wrote that claimant had previously been diagnosed by his school with

having ASD. This is not correct, and nowhere in the report did Dr. Frazier-Philo indicate that she reviewed the psychological evaluation prepared by the school district. In addition to erroneously believing claimant had been diagnosed with ASD, the prior evaluation provided observations about claimant's behavior in various setting and additional information about claimant's developmental history that were not addressed by Dr. Frazier-Philo.

Dr. Brooks reviewed the cognitive test results, which showed that respondent had a full scale IQ in the average range. Claimant was administered the Conners 3rd Edition-Parent to evaluate claimant's mother's observations about claimant's behavior at home and in the community. She reported claimant was significantly impaired in the areas of inattention, learning problems, and peer relations. According to the test index, there is a 91 percent chance (i.e., high probability) that claimant has ADHD.

Claimant's adaptive functioning was assessed through the Vineland-3 Adaptive Behavior Scales, which was completed by claimant's mother. Claimant was rated overall as "moderately low" and in the domains of communication and daily living skills. He was rated as "adequate" in the area of socialization. Overall, in terms of communication skills and daily functioning, he was below age level. His social skills and relationships were at age level, and his overall ability to adapt and function compared to his age was moderately low. Dr. Brooks testified that all of claimant's adaptive functioning scores were above 70, which is not suggestive of significant adaptive deficit.

Claimant was administered the Autism Rating Scales (ASRS), again reported by claimant's mother. Based on this assessment, claimant struggles to relate to peers, engages in odd/repetitive behaviors, struggles to tolerate changes to routines, and overreacts negatively to sensory stimulation. However, he does not struggle to provide

appropriate emotional responses to people in social situations, use language appropriately, or struggle to maintain his attention and regulate his behavior.

Finally, claimant was administered the Childhood Autist Rating Scale (CARS-2). A score below 27.5 is considered non-autistic. Claimant scored 32.5, placing him in the level of “mild to moderate symptoms” of ASD. Despite this, Dr. Brooks believed that claimant’s overall moderately low adaptive functioning precludes a diagnosis of ASD.

10. Based on these records, the eligibility team concluded that further intake services are not required because there was no evidence to establish claimant has substantial deficits in adaptive functioning. Dr. Brooks agreed with the multidisciplinary team’s conclusion that claimant is not eligible for regional center services.

11. Claimant’s mother testified that her main concern is trying to get claimant therapy. She has attempted to do so through her health insurance but was told there is a waiting list. He has received minimal help so far, and Dr. Frazier-Philo recommended that claimant receive therapy to help claimant with his autistic symptoms. Claimant’s mother was told that IRC is the best option. She is not sure why IRC is refusing to help because claimant has a lot of problems. She still needs to help claimant bathe and care for himself. She wants assistance in helping to teach him to do these things himself.

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.)

Relevant Law and Regulations

2. 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.

3. 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.)

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 retardation², 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;

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.

(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 intellectual disability, 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 intellectual disability."

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. Upon an application for services, the regional center is charged with determining if an individual meets the definition of developmental disability contained in Welfare and Institutions Code section 4512. In this assessment, "the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. § Inst. Code, § 4643, subd. (b); Cal. Code Regs., tit. 17, § 54010.)

8. Welfare and Institutions Code section 4642 requires a regional center to perform "initial intake and assessment services" for "any person believed to have a

developmental disability.” Intake shall also include a decision to provide assessment but does not require an assessment. (*Id.* at subd. (a)(2).)

Evaluation

9. Claimant failed to establish that he qualifies for regional center services. The only expert who testified was Dr. Brooks. Based on the records provided, Dr. Brooks’s uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for intellectual disability or ASD. Moreover, nothing in any records showed claimant is substantially disabled within the meaning of the applicable law. It is clear that claimant has some behavioral issues that are challenging. However, these are more likely associated with ADHD, which is not a qualifying condition for regional center services. It is understandable that claimant’s mother only wants the best for her child and to help him with his challenges. However, based on the records provided, a preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category, including further intake.

ORDER

Claimant’s appeal from Inland Regional Center’s determination that he is not eligible for regional center services is denied.

DATE: July 1, 2022

ADAM L. BERG

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.