

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2022070091

DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on August 10, 2022, by videoconference and telephone.

Pablo Cerda and Sylvia Wendell, Social Worker, represented claimant, who was not present.

Keri Neal, Fair Hearings Representative, represented Inland Regional Center, the service agency.

The record closed, and the matter was submitted for decision on August 10, 2022.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD)?

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy living in a foster care setting.
2. Until the age of eight, claimant lived with his mother in a homeless encampment. Claimant was the victim of emotional, physical, and sexual abuse, the latter of which prompted his removal from his biological mother's care and placement into foster care.
3. Claimant was placed with a foster family shortly after his removal from his biological mother's care and is currently living with that family. The foster family is in the preliminary stages of adopting claimant.
4. Sylvia Wendell, claimant's social worker and authorized representative, submitted a referral to Inland Regional Center (IRC) for an assessment of regional center eligibility on a date not established by the record.
5. On May 31, 2022, IRC issued a Notice of Proposed Action (NOPA). The NOPA set forth the determination by IRC that claimant was not eligible for regional center services because he did not have a developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act).
6. IRC received claimant's fair hearing request (FHR) on June 24, 2022. Claimant's FHR also requested an informal meeting with IRC.

7. On July 26, 2022, an informal meeting was held telephonically. Present were Wendell, Jennifer Cummings, program manager at IRC, and Carlos Maturino, Department of Children and Family Services supervisor. In a letter dated July 26, 2022, IRC affirmed the decision regarding claimant's eligibility for regional center services outlined in the NOPA. This hearing followed.

Diagnosis and Evaluation

8. On October 18, 2021, Jessica Lenihan, Psy.D., wrote a neuropsychological evaluation report regarding her evaluation of claimant for the Temecula Valley Unified School District. Dr. Lenihan observed claimant in claimant's classroom at school on October 1, 2021, for approximately one hour. Dr. Lenihan observed that for the majority of the hour, claimant sat quietly at his desk taking an English quiz. Following completion of the quiz, claimant remained sitting quietly at his desk without interacting with any other student.

After the quiz, the next assignment was reading a story. Claimant began doodling on paper, rather than paying attention to the teacher as she explained the assignment. Claimant required prompting to follow the directions of the teacher, was easily distracted, and exhibited difficulty completing the assignment. Claimant did not exhibit disruptive behaviors in the class. Instead, he demonstrated difficulty with task initiation, distractibility, and on-task behavior.

9. Dr. Lenihan administered several diagnostic tests to claimant. One of the tests showed claimant's IQ was 91, well within the normal range. Dr. Lenihan noted that claimant had suffered neglect, poor nutrition, and trauma, and that they placed him at risk for neurodevelopmental deficits. Despite those risks, Dr. Lenihan stated claimant had performed in the average range for verbal and nonverbal

reasoning/intelligence, fluid reasoning, and learning and memory. Claimant had poor performance on tasks requiring brief and sustained attention, working memory, executive functioning, processing speed, and response rate.

10. Dr. Lenihan diagnosed claimant with attention deficit/hyperactivity disorder (ADHD), specific learning disorder with impairments in mathematics and writing, persistent depressive disorder (PDD), and unspecified trauma and stress-related disorder. She noted that claimant exhibited some difficulties with atypical attachment and relationship interactions. Dr. Lenihan also noted that claimant is inhibited and emotionally withdrawn. She noted that claimant showed “a depressed mood, flat affect, withdrawal, irritability and social isolation.” Dr. Lenihan stated claimant’s presentation is consistent with PDD. It is worth noting that Dr. Lenihan’s report did not mention ASD.

11. Claimant was evaluated for an individualized education program (IEP). The IEP, dated December 16, 2021, noted that claimant enjoyed reading and showed “relative strength in language development and reading.” The IEP noted that claimant had difficulty engaging in class and participating in classroom discussions or activities. It was determined that claimant would benefit from additional time to complete tasks, a structured learning environment, and being exposed to a multitude of learning strategies.

12. Child psychiatrist, Arlene Ginesta, M.D., is currently treating claimant. Dr. Ginesta prepared a written annual assessment of claimant dated January 18, 2022. In the report, Dr. Ginesta noted that claimant had not been screened for ASD.

13. Claimant provided a letter dated May 4, 2022, from Dr. Ginesta. In the letter, Dr. Ginesta stated that claimant had been diagnosed with ASD and ADHD. There

were no records of any screening for ASD provided with the letter. Dr. Ginesta did not testify at hearing.

14. Sandra Brooks, Ph.D./Psy.D. is on the eligibility team for ASD and intellectual disability at IRC. Dr. Brooks is a licensed clinical psychologist. She obtained her Ph.D. 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 assessment of individuals for regional center services. Dr. Brooks issued a report of her eligibility evaluation of claimant and testified at hearing regarding the basis for her opinion that claimant was not eligible for services.

15. In performing her evaluation, Dr. Brooks reviewed claimant's records including the reports by Dr. Lenihan, the letter from Dr. Ginesta, and the IEP. Dr. Brooks opined that claimant's measured IQ precluded him from a diagnosis of intellectual disability. Dr. Brooks noted that learning disabilities, solely psychiatric or physical disorders were generally excluded from eligibility for services. Dr. Brooks acknowledged that claimant showed some of the symptoms of ASD but that they were directly attributable to his PDD and unspecified trauma and stress-related disorder diagnoses, none of which qualify an individual for regional center services.

Claimant's Additional Evidence

16. Wendell testified on behalf of claimant. She has been claimant's assigned social worker for approximately one year. Wendell sees claimant once per month. She observed that claimant's behavior is consistent with that of an eight-year-old. Claimant does not engage in reciprocal conversation. Claimant struggles with daily activities and social interaction. Wendell stated that claimant's foster mother informed her that claimant needs constant reminders to do simple things such as eating or showering. Wendell emphatically stated and believes that claimant would benefit from IRC services.

Ultimate Factual Findings

17. Dr. Lenihan did not diagnose claimant with ASD. She attributes any behaviors consistent with ASD to claimant's diagnoses of PDD and unspecified trauma and stress-related disorder. Dr. Lenihan performed a battery of neuropsychological tests of claimant and observed him at school. Dr. Ginesta authored a letter with a diagnosis of ASD for claimant without any screening for ASD. Dr. Brooks testimony was consistent with the report of Dr. Lenihan. Dr. Lenihan's report and Dr. Brooks testimony was more persuasive than the letter from Dr. Ginesta. Claimant has failed to establish that he has a diagnosis of ASD.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code¹ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded² Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The term “intellectual disability” has replaced the formerly used term of “mental retardation.”

person's age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met his burden of establishing that he is eligible for regional center services. He has failed to establish that he has a diagnosis of ASD. (Factual Finding 17.) The evidence demonstrated that claimant does exhibit some behaviors consistent with ASD, but they are attributable to his diagnosis of PDD. (Factual Finding 17.)

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE: August 22, 2022

TRACI C. BELMORE
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.