

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022090624

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on October 26, 2022.

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

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

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on October 26, 2022.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of an intellectual disability, autism or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category") that constitutes a substantial disability?

SUMMARY

Claimant failed to establish that she is eligible for regional center services as a result of an intellectual disability or autism, or under the fifth category. Claimant's appeal of IRC's determination that she is not eligible for services is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 29, 2022, IRC sent claimant a Notice of Proposed Action stating that a review of the records indicated that claimant did not have a "substantial disability" as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition under the fifth category.

2. On September 9, 2022, IRC received a fair hearing request filed by claimant's mother. An informal meeting was held telephonically on October 3, 2022, after which IRC notified claimant's mother that it was standing by its decision that claimant was not eligible for regional center services. This hearing followed.

Background

3. Claimant is currently six years old and lives with her parents, two siblings, and paternal family members. Claimant met Title 5¹ criteria for special education services under autism. She receives speech therapy and occupational therapy through her school district.

Applicable Diagnostic Criteria

AUTISM SPECTRUM DISORDER

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) contains the diagnostic criteria used for Autism Spectrum Disorder (ASD), as follows: 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 functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

INTELLECTUAL DISABILITY

5. The DSM-5 also provides three diagnostic criteria that must be met to support a diagnosis of Intellectual Disability: deficits in intellectual functions (such as reasoning, problem solving, abstract learning and thinking, judgment, and learning from experience) "confirmed by both clinical assessment and individualized

¹ California Code of Regulations, Title 5, section 3030.

standardized intelligence testing”; deficits in adaptive functioning “that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility”; and the onset of these deficits during the developmental period.

ELIGIBILITY UNDER THE FIFTH CATEGORY

6. Under the fifth category, the Lanterman Act provides assistance to individuals with a disabling condition closely related to intellectual disability or that requires treatment similar to that required by an individual with an intellectual disability. The fifth category does not include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

7. A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with

insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

8. In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery;

individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

SUBSTANTIAL DISABILITY

9. The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: 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.

Evidence Presented at Hearing

10. Ruth Stacy, Psy.D., is a licensed clinical psychologist and has served as staff psychologist at IRC for the past seven years. However, she has been on the IRC staff for over 30 years, and previously worked as a consumer services coordinator, and as an intake and assessment counselor for 16 years. Her duties as staff psychologist include reviewing records and conducting psychological assessments to assist IRC's multidisciplinary eligibility team to determine if potential clients are eligible for services. Dr. Stacy conducted a psychological assessment of claimant and testified at the hearing.

Dr. Stacy explained that in order to be eligible for regional center services under the Lanterman Act, claimant must have a developmental disability of autism, epilepsy, cerebral palsy, intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that for individuals

with an intellectual disability (fifth category), originating before claimant attains 18 years of age and that continues, or is expected to continue, indefinitely and constitutes a substantial disability for claimant. Dr. Stacy explained that in order to determine whether a diagnosis of a developmental disability is substantially disabling so as to qualify for regional center services, there must be significant functional limitations in at least three of the seven life activities listed in California Code of Regulations, section 54001, which are: self-care, receptive and expressive language, learning mobility, self-direction, capacity for independent living, and economic self-sufficiency. Conditions precluded from qualifying conditions are conditions that are solely psychological, solely physical, psychiatric, or specific learning disabilities.

Dr. Stacy explained that claimant's school district provides special education services under Title 5, whereas regional centers are governed by Title 17.² Title 5 is far less stringent than the criteria for receiving services from the regional center under Title 17. The school district can provide special education services if an individual displays "autistic-like" behaviors, it is not necessary that the child meet the full DSM-5 criteria for a diagnosis of autism.

CLAIMANT'S PREVIOUS ASSESSMENTS AND RECORDS

11. A Psychoeducational Assessment was conducted on November 19, 2021, when claimant was five and a half years old. Tests were administered in a school setting to assess claimant's cognitive academic abilities and determine eligibility for special education services.

² California Code of Regulations, Title 17, section 54000 et. seq.

The Kaufman Assessment Battery for Children 2nd Edition Normative Update (KABC-II NU) was administered to obtain an estimate of claimant's current level of cognitive functioning. On the nonverbal index she obtained a standard score of 87, which was in the low average range.

The Autism Spectrum Rating Scales (ASRS) was administered. Both of claimant's parents and her teacher filled out the ASRS ratings forms. These forms are used to quantify observations of a child that are associated with ASD. Based on the responses of claimant's parents, the pattern of scores indicated claimant's behavior fell in the average score range, indicating that she had few behavioral characteristics that are similar to those exhibited by children diagnosed with ASD. The teacher's scores were much higher and fell within the probability of autism. The teacher's responses indicated that claimant has symptoms directly related to the DSM-5 diagnostic criteria, and that she exhibited many of the features that are characteristic of ASD.

The Childhood Autism Rating Scale (CARS2-ST) looks at 15 different areas in children that are suspected of possible autism. Claimant's overall score was 32.5, which fell with the mid-to-moderate range of ASD.

The outcome of the assessment concluded that claimant met the criteria for Title 5 services under autism.

12. On May 31, 2022, a Psychological Assessment was conducted by Theodore Swigart, Ph.D., of AB Psych Consulting. This evaluation was completed to help determine if claimant was eligible for regional center services.

The Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) was administered. The ADOS-2 is the "gold standard" for assessing autism because it is play-based with live interactions, and the activities are designed to look for specific

social and communication interactions. The test looks at verbal and nonverbal communication and takes into consideration language barriers. Claimant would not have been able to participate in the activities if she were unable to understand instructions or what was being said. Claimant speaks both Spanish and English. Descriptors in the test evaluation included: directed facial expressions and eye contact, reciprocated smiles, social awareness, shared enjoyment in interaction, and effective social communication skills. These characteristics are typically not seen with ASD. Claimant's overall ADOS-2 score indicated minimal to no evidence of autism.

The Childhood Autism Rating Scale, Second Edition (CARS2-HF) High Functioning Version was administered. Claimant's overall scores fell within minimal to no evidence of ASD.

Dr. Swigart administered the Adaptive Behavior Assessment System Third Edition (ABAS-3). According to claimant's father, her adaptive functioning was in the low range. Her functional pre-academics and self-care were in the extremely low range.

Cognitive testing could not be administered due to issues with claimant's listening and attention. However, previous testing showed nonverbal skills to be in the low average range, which is in the above range for intellectual disability. Her adaptive skills, while delayed, were above the range of intellectual disability. Dr. Swigart determined that she did not meet the criteria for intellectual developmental disorder.

Dr. Swigart concluded that claimant did not meet the DSM-5 criteria for ASD, and she was therefore ineligible for regional center services. His diagnostic impression was that claimant had a language disorder.

13. A Psychoeducational Assessment was conducted on November 19, 2021. The assessment reflected that, based on observation, informal assessment and parent report, claimant presented with age-appropriate self-help skills. Dr. Stacy said this was significant because these scores indicate average range or definitely higher than what was rated by the parents on the ABAS on May 31, 2022. The assessment stated that no further testing in this area was necessary.

14. On June 29, 2022, IRC determined that claimant was ineligible for Lanterman services under any diagnosis, including autism.

Testimony of Claimant's Mother

15. Claimant's mother gave the following reasons that claimant qualifies for regional center services: Claimant is not 100 percent verbal; she needs services because she is not able to see or anticipate potential danger around her; she demonstrates behavioral issues; she is not independent and is not able to do several things on her own and she must always be monitored and supervised; and she is intellectually not at the level she should be at her age.

LEGAL CONCLUSION

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 eligibility criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 115; 500.)

Applicable Statutes

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

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 follows:

“Developmental disability” means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. Welfare and Institutions Code section 4512 (l)(1) defines “substantial disability” as:

. . . the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

(a) 'Developmental Disability' means a disability that is attributable to mental retardation, 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.

(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 psychosocial 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.

7. California Code of Regulations, title 17, section 54001, subdivision (a), also defines "substantial disability" and requires "the existence of significant functional limitations, as determined by the regional center, in three or more of the . . . areas of major life activity" listed above.

Appellate Authority

8. The purpose of the Lanterman Act is 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.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

9. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

10. California Code of Regulations, title 17, section 54001, subdivision (a), also defines “substantial disability” and requires “the existence of significant functional limitations, as determined by the regional center, in three or more of the . . . areas of major life activity” listed above.

Evaluation

11. The information contained in claimant’s records reviewed by IRC and Dr. Stacy did not show by a preponderance of the evidence that claimant is substantially disabled in three or more areas of a major life activity under applicable law as a result of a qualifying developmental disability. Dr. Stacy’s expert opinion that claimant is ineligible for regional center services was uncontested and the records claimant

provided did not support the conclusion that claimant suffers from autism, intellectual disability, or would qualify under the fifth category. Therefore, claimant failed to meet her burden of proof to establish that she is eligible to receive services under the Lanterman Act.

ORDER

Claimant's appeal from IRC's determination that she is not eligible for regional center services is denied.

DATE: November 9, 2022

MARION J. VOMHOF

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.