

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

DDS Case No. CS0003833

OAH No. 2023040336

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 31, 2023.

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

Claimant's mother appeared on claimant's behalf.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 31, 2023.

ISSUE

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

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 24-year-old man.
2. On December 6, 2022, following a request that claimant be made eligible for regional center services under the category of autism, an IRC multidisciplinary team comprised of a psychologist, medical doctor, and a Senior Intake Counselor at IRC reviewed claimant for eligibility and determined he did 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. This determination was made following a review of the records and a psychological assessment conducted by an IRC contract psychologist.
3. On March 15, 2023, IRC received an appeal filed by claimant's mother on claimant's behalf, seeking review of IRC's decision. The appeal did not state under which category claimant might be eligible, however, the records and claimant's mother's testimony at the hearing indicated she was seeking eligibility for claimant under the category of autism.

4. On March 23, 2023, claimant's mother and IRC representatives attended an informal meeting to discuss the appeal. Following the meeting, IRC adhered to its determination that claimant is not eligible for regional center services.

Diagnostic Criteria for Autism

5. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (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 spectrum disorder to qualify for regional center services based on autism.

Testimony of Ruth Stacy, Psy.D., and Summary of Pertinent Records

6. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy has worked at IRC since 1991. She has served as a staff psychologist since 2015, where her primary responsibilities involve assessing individuals for regional center services and reviewing intake records to determine whether an individual is eligible for regional center services. Dr. Stacy also served as a Senior Intake Counselor and Senior Consumer Services Coordinator prior to becoming a staff psychologist. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism and in the

assessment of individuals for IRC services. The following is a summary of Dr. Stacy's testimony and relevant records.

7. On November 30, 2007, Saadia McLeod, Ph.D., conducted an assessment of claimant who was nine years old at the time. Dr. McLeod interviewed claimant's parents, reviewed school records, provided a behavioral checklist to claimant's teacher, and gave several other checklists to rate behaviors to determine if claimant had symptoms of Asperger's Syndrome or other disorders. Dr. McLeod concluded claimant had deficits in social-emotional functioning, restricted areas of interest, talked excessively about those interests, had few friends, and did not tolerate changes to the daily schedule. There was no raw data or test results attached to Dr. McLeod's two-page report. No formal testing for autism was conducted and no standardized tests were administered. In her report that summarized the above behaviors, Dr. McLeod opined that the behaviors were "strongly indicative of a diagnosis of Asperger [*sic*] Disorder." The report did not render a formal diagnosis of Asperger's Syndrome or autism.¹

8. A four-page "504 Plan" from claimant's school district, dated February 26, 2015, when claimant was 16 years old, indicated claimant received accommodations in high school due to "Aspergers." Those accommodations were: breaking down

¹ The DSM-IV-TR pre-dated the DSM-5 and DSM-5-TR. In the DSM-IV, Asperger's Syndrome (then named "Asperger's Disorder") was a separate category from autism (then named "autistic disorder"). Both were subcategories of pervasive development disorders. But, even under the DSM-IV-TR, Asperger's disorder was not a condition that qualified a person for regional center services.

instruction into smaller steps, preferential seating, adjusting claimant's schedule, placing claimant in class with a friend, and providing a regular routine. Nothing was provided indicating claimant ever received special education services, and the 504 plan did not indicate claimant had diagnosis of autism. Dr. Stacy explained that a 504 plan is what school districts give to students who do not qualify for special education services, but who may need accommodations for other reasons. Of note, school district determinations are not binding on regional centers as school districts are governed by different regulations and code sections.

9. On August 31, 2022, IRC conducted a social assessment of claimant, who was 24 years old at the time. The assessment was conducted telephonically because claimant's family had contracted COVID. The assessment noted claimant had no motor skills problems; required some prompts for daily tasks; did not have any safety issues; needed some encouragement to stay on task and to prevent him from becoming overwhelmed; and had the ability to communicate. Claimant's mother reported claimant displays anxiety and depression that is worsening as he gets older, and that he will get upset with any changes to routine. Claimant tolerates crowds but does not socialize. Claimant is very structured and likes things organized. Sometimes claimant gets frustrated for no reason. When he does, claimant grunts, cries, bangs things around, throws things, and uses profanity. Based on the social assessment, IRC determined claimant should undergo further psychological evaluation for autism.

10. On November 8, 2022, Anthony Benigno, Psy.D., conducted a comprehensive psychological assessment of claimant, who was 24 years old at the time. Dr. Benigno conducted the Adaptive Behavior Assessment System Third Edition (ABAS-3); the Autism Diagnostic Interview, Revised (ADIR); the Autism Diagnostic

Observation Schedule, Second Edition (ADOS-2); and the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-4).

11. The ADIR assessed the following areas, based on reporting by claimant's mother: reciprocal social interaction; communication; and restricted, repetitive, and stereotyped patterns of behavior. The ABAS-3 assessed claimant's adaptive skills. Claimant's mother rated him extremely low in all areas of the ABAS-3 and gave similarly low ratings on the ADIR. However, those ratings were inconsistent with claimant's scores on the WAIS-4, which is a standardized measure, and the ADOS-2, which is the gold standard for autism diagnosis. On the WAIS-4, claimant tested mostly in the average and high average range of intelligence, with a few scores noted as delayed. Claimant's full scale IQ was 93, which is in the average range of cognitive functioning. On the ADOS-2, claimant tested well outside the autism range. Dr. Benigno concluded claimant did not meet the diagnostic criteria for autism or intellectual developmental disorder but encouraged claimant's parents to seek individual therapy to address claimant's social deficits.

12. Dr. Stacy reviewed Dr. Benigno's evaluation and the other records described above and concurred with Dr. Benigno's assessment that claimant did not meet the DSM-5-TR criteria for autism. She further concluded that, because claimant did not have a qualifying condition or a substantial disability as a result of autism, as defined in the California Code of Regulations, claimant was not eligible for regional center services.

Testimony on Behalf of Claimant

CLAIMANT'S MOTHER'S TESTIMONY

13. Claimant's mother's testimony is summarized as follows: Claimant was diagnosed with Asperger's Syndrome at a very young age. Even as a toddler she knew something was not right. Claimant had the 504 plan in place during his school years because he needed the accommodations due to his Asperger's Syndrome. Claimant always struggled a lot socially, and in high school she had to pull claimant out and put him in independent study. Claimant felt the workload was too much. At some point claimant decided to go back. School was still very difficult for claimant, and it was not until his senior year that he had a group of friends to connect with. Claimant's mother encouraged claimant to go out and get a job. Any success claimant has had is because of the family. Claimant still struggles with social skills. Claimant needs to be reminded on a daily basis to do certain tasks, such as personal hygiene, chores, make doctor's appointments, and homework. Claimant has had meltdowns his whole life. Claimant is very smart and doing well in college but has no friends. Claimant's intelligence is what keeps him from getting any kind of services because he does not want to be placed into any categories; he knows what to say in order to avoid being categorized as autistic. Claimant's mother is concerned because she wants claimant to be more independent so that when family is no longer around, claimant will be able to survive. She is afraid claimant will graduate college but not have a future. Claimant needs some kind of assistance.

CLAIMANT'S SISTER'S TESTIMONY

14. Claimant's sister's testimony is summarized as follows: Claimant is her older brother and she agreed with her mother's testimony. Claimant's sister explained

that claimant has meltdowns often and she has been seeing the challenges described by claimant's mother since she was a child. Claimant's sister became emotional as she began describing how she is 21 years old and feels like a baby sitter because claimant cannot be left by himself. Claimant constantly has to be reminded to do everything; even something as simple as getting their mother a gift on Mother's Day. When claimant was in high school he had some friends, but then he would all of a sudden become stressed and not hang out with his friends anymore. Claimant's sister wants claimant to be able to get help instead of having to rely on claimant's mother and her. She wants claimant to have a normal life. She is worried about what is going to happen when claimant gets older.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide an array 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 Lanterman Act 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.)

2. 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 (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.)

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,

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. Further, the DSM-5-TR no longer uses the term "intellectual disability" and instead refers to the

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.

condition as "intellectual developmental disorder," however, the California Code of Regulations has not been updated to reflect this change.

(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.

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.)

Conclusion

8. Claimant's mother and sister gave heartfelt testimony and are both clearly dedicated to finding services that may help claimant lead a more independent life. They both provided a list of areas where claimant experiences difficulties in his ability to initiate tasks, stay on task, and lead an independent life, and also expressed concern regarding his meltdowns and ability to engage in normal social relationships. While claimant certainly appears to exhibit challenges in these areas and their concerns are valid, the Lanterman Act limits regional center services to only individuals who have challenges that are directly related to a qualifying condition.

9. No evidence was presented, nor was it claimed, that claimant was eligible under the categories of epilepsy; cerebral palsy; intellectual development disorder; or the fifth category. Regarding autism, Dr. Benigno conducted a comprehensive psychological assessment that included the ADOS, which is widely considered the gold standard for rendering an autism diagnosis. Claimant tested in the non-spectrum range. Claimant also tested in the non-spectrum range on the ADIR. Further, based on Dr. Benigno's observations and the results of the ABAS-3, claimant did not show the deficits necessary in his adaptive skills to be considered substantially disabled.

Claimant never received special education services for autism, and although claimant received some accommodations to assist him in school during his developmental years, those accommodations were not due to an autism diagnosis. There was a two-page document from 2007 that was labeled an assessment but did not show any raw data regarding tests for autism. There was some evidence that claimant may have had a diagnosis of Asperger's Syndrome under the DSM-IV-TR, however, Asperger's Syndrome did not meet the diagnostic criteria under the DSM-IV-TR for regional center services. Further, Asperger's Syndrome was eliminated as a separate diagnosis in the DSM-5 and DSM-5-TR. Thus, there were no records during claimant's developmental period that suggest he presently meets the DSM-5-TR diagnostic criteria for autism.

10. Dr. Stacy is an expert on rendering opinions regarding an individual's eligibility for regional center services, and she reviewed all documents in this case and concurred with Dr. Benigno's conclusion that claimant does not meet the DSM-5-TR criteria for autism and is not eligible for regional center services.

11. Accordingly, a preponderance of the evidence does not support eligibility for regional center services under any qualifying category, and claimant's appeal must be denied.

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ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual disability, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: June 6, 2023

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.