

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016021021

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 30, 2016.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother and father appeared on behalf of claimant. Claimant was present throughout the hearing.

The matter was submitted on March 30, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (autism)?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On January 28, 2016, IRC notified claimant, a 26-year-old man, that he was not eligible for regional center services because the records he provided to IRC did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment as an individual with an intellectual disability.

2. On February 25, 2016, claimant's mother and IRC representatives attended an informal meeting. Claimant's mother outlined the reasons she believed claimant qualified for regional center services under the category of autism. IRC reviewed the records and discussed the content of the records with claimant's mother. Specifically, IRC noted in its letter memorializing the content of those record the following:

School records describe [claimant] as friendly and cooperative. They stated that he is able to adequately express himself in social conversations, and that his social interactions with both adults and peers are positive in nature. The Sohn Grayson Rating Scale, which appears to be the instrument a doctor used to diagnose "Autistic Continuum," is only a screening tool and this does not equate to a diagnosis. When we discussed [claimant's] adaptive functioning, the description you gave me does not support eligibility.

At the conclusion of the meeting, IRC adhered to its original determination that claimant was not eligible for regional center services.

3. On February 16, 2016, claimant filed a Fair Hearing Request, appealing IRC's

determination and authorizing his mother to act as his representative.

#### DIAGNOSTIC CRITERIA FOR AUTISM

4. An individual must have a diagnosis of autism pursuant to the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) to qualify for regional center services. The DSM-5 identifies criteria for the diagnosis of autism as follows: Persistent deficits in social communication and social interaction across multiple contexts, as manifested by deficits in social-emotional reciprocity, deficits in nonverbal communicative behaviors used for social interaction, and deficits in developing, maintaining, and understanding relationships; restricted repetitive patterns of behavior, interests, or activities as manifested by stereotyped or repetitive motor movements, insistence on sameness, highly restricted or fixated interests, and hyper- or hyporeactivity to sensory input; and symptoms that manifested in the early developmental period and currently cause clinically significant impairment in social, occupational, or other important areas of functioning. Finally, the symptoms must not be better explained by intellectual disability or global developmental delay.

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#### EVIDENCE PRESENTED BY IRC

5. Michelle Lindholm holds a Ph.D. in clinical psychology, is a board-certified behavior analyst, and serves as a staff psychologist at IRC. Dr. Lindholm testified at the hearing.

6. Dr. Lindholm reviewed claimant's medical records, which included the following: School records; a psychoeducational report dated January 15, 1999; a speech and language evaluation dated March 23, 2000; a psychoeducational report dated November 13, 2001; an assessment completed by the Truesdail Center for Communicative Disorders on December 6, 2001; and several neuropsychological assessments completed in

2003.

7. Based on her review of claimant's records, Dr. Lindholm concluded that claimant's records were inconsistent with a diagnosis of autism. Further, she concluded that, even if claimant were to have a diagnosis of autism, there was no evidence that he was substantially disabled in three or more major life activities as a result of that condition. Thus, claimant's records did not establish that he met the eligibility criteria to obtain regional center services.

Dr. Lindholm commented on various records and stated why those records did not support claimant's eligibility for regional center services. Regarding a September 7, 2010, letter from Department of Rehabilitation counselor Yasmine Bachmeier to claimant, Dr. Lindholm noted that Ms. Bachmeier documented that claimant suffered from a learning disability and speech disorder, conditions that do not qualify an individual for regional center services.

Regarding a disabled dependent certification form completed by Eric Fox, M.D., Dr. Lindholm noted that the form mentioned a cognitive delay, slow thought patterns, and delayed auditory processing. Dr. Fox characterized claimant's condition as a language disorder and expressive language disorder, under the DSM-5, conditions that do not qualify an individual for regional center services.

Regarding the eight Individualized Education Program plans (IEP's) covering the years 1995, 1997, 1999, 2000, 2001, 2002, 2005, and 2006, Dr. Lindholm observed that the goals set forth in the IEP's were specific to improving language and math skills; there were no stated goals in the area of social interaction. There were no applied behavioral analysis services in place and no evidence that claimant had any behavioral problems. Dr. Lindholm concluded the IEP's did not contain any evidence that supported a diagnosis of autism or claimant's eligibility for regional center services.

Dr. Lindholm also concluded that several IEP team meeting reports did not contain

evidence that claimant suffered from autism. Regarding an IEP team meeting report from 2002, Lindholm observed that claimant's teacher described him as lacking in self-confidence, but it did not indicate he refrained from engaging in peer interaction or play. Regarding the IEP team meeting report completed in 2002, Dr. Lindholm noted that claimant's teacher described him as quiet and reserved but cordial and cooperative; there was no mention of social deficits or problems engaging in peer relations. Similarly, the IEP team meeting report in 2006 described claimant as cooperative and completing his assignments, but withdrawn at times. The report did not indicate that claimant suffered from any social deficits or problems interacting with his peers.

Dr. Lindholm explained that, in January 2016, claimant's records showed that claimant's medical doctor, Richard Kotomori, M.D., provided claimant with diagnoses of Obsessive Compulsive Disorder and "autistic continuum." Dr. Lindholm stated that, based on the records, it appeared that Dr. Kotomori utilized the Sohn Grayson Rating Scale as the basis for his conclusions. Dr. Lindholm stated that the Sohn Grayson Rating Scale is merely a screening measure used for children and adolescents, and because of claimant's advanced age, she could not be certain of the psychometric validity of the test results. Moreover, even though Dr. Kotomori's report concluded with a diagnosis of Asperger's Disorder<sup>1</sup>, the report was incomplete, conclusory, and did not explain how Dr. Kotomori reached his diagnosis.

Dr. Lindholm observed that a December 1998 assessment completed by claimant's school when claimant was in third grade did not involve an assessment for autism. The

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<sup>1</sup> Dr. Lindholm pointed out that, while she could not agree with the diagnosis of autism for the reasons stated above, claimant might be able to obtain social and behavioral counseling services through his medical insurance provider because his medical doctor provided a diagnosis of autism.

December 1998 assessment described claimant laughing, joking, and communicating with ease in social conversations. This assessment also noted that claimant's social interactions were positive in nature. Dr. Lindholm testified that the information contained in the December 1998 assessment was inconsistent with a diagnosis of autism.

Dr. Lindholm testified that the speech and language assessment completed by the Truesdail Center for Communicative Disorders on March 23, 2000, also indicated behaviors that were inconsistent with autism. For example, while the report noted that claimant was not the leader of his group of friends, he interacted effectively with peers. Claimant's teacher reported that he liked to play soccer with friends. During the parent interview, claimant's mother stated that claimant got along well with peers and had an intimate group of friends. Dr. Lindholm stated that observations contained the assessment - that claimant was friendly, compliant, attentive, and exhibited exemplary behavior - were inconsistent with a diagnosis of autism.

In conclusion, Dr. Lindholm stated that while claimant's records showed some evidence of speech and language delays throughout his educational history, they did not contain evidence of behaviors consistent with a diagnosis of autism.

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#### EVIDENCE PRESENTED BY CLAIMANT

8. Claimant's mother testified at the hearing. According to claimant's mother, claimant is very close with his immediate family. He is polite, although sometimes he can have a temper.

Claimant had friends when he was in school; however, they were friends he met in the daycare claimant's mother ran in her home. The kids she took care of in the daycare just happened to be the same kids claimant was with from the time he was born until about tenth grade. Thus, claimant was comfortable with them.

Claimant does not like to talk on the phone, will not send e-mails, and lacks

emotional maturity. Claimant's mother described his current social interactions as very poor.

Claimant's mother believes that claimant is not able to live on his own. He can dress himself, feed himself, and tend to his hygiene. However, his sleeping habits are not normal. Sometimes he stays up all night playing video games or watching television. Claimant will wake up, take a shower, and then sleep all day. He can count, but if he received change at a store, he would not necessarily know whether it was the correct amount.

Claimant and his mother have contact daily; she sends him text messages and he promptly responds. If claimant's mother texts and directs him to do a particular chore, he will do it. Claimant is good about telling her what she needs at the store and in communicating problems to her. If claimant gets mad, he will turn his phone off.

Claimant's mother stated there are a lot of broken things in their home, such as faucets and doorknobs, because claimant exaggerates his movements when he turns things on or off; he often breaks whatever he is touching at the moment. Claimant can be a bit clumsy at times, and does not like loud noises.

From 2010 to 2015, claimant was a custodian at a daycare facility for dogs. Claimant told his mother every day that he wanted to quit because the job was stressful and noisy, but she convinced him to keep trying. Claimant's mother believed the loud noise from the barking dogs was tough on claimant. Just before claimant left the job in 2015, a new manager was hired. The hours and the work environment changed. Claimant did not adjust well to the change in the structure of his daily routine at work and quit.

9. Claimant's mother provided a letter from Dr. Kotomori, M.D., dated March 23, 2016. Dr. Kotomori wrote:

Please be advised that based on evaluation, history, and Sohn Grayson Rating Scale the above patient has been

diagnosed with Autism Spectrum Disorder. Claimant would benefit from the Inland Regional Center services to promote social skills and assistance in the workplace. Please contact the office with any questions, along with the proper form of release.

The letter did not contain any additional documentation stating how Dr. Kotomori reached his diagnosis, whether he used the DSM-5 criteria to reach his conclusion, or what assessments, if any, were administered in order to diagnose claimant with autism.

10. Claimant's mother testified she has not sought medical services for claimant because the few medical or psychological professionals who have assessed claimant have referred him to IRC.

11. Claimant's father testified at the hearing. His testimony was consistent with that of claimant's mother. Claimant's father expressed frustration with the process because he and his wife have been trying to get claimant help for his entire life. His love for claimant was evident; he wants the best for his son. Claimant's father testified that he and his wife simply want to get claimant some help to improve his social skills so claimant will be able to take care of himself when they are no longer around.

#### OBSERVATIONS OF CLAIMANT

12. Claimant was quiet and reserved throughout the hearing. He was patient and did not interrupt the proceedings. Claimant was very polite when spoken to by the ALJ. Several questions were posed to claimant, and his responses were subject-matter appropriate. Claimant did not display any repetitive patterns of behavior during the hearing. Claimant was given an opportunity to testify but politely declined.

## 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.)

### STATUTORY AUTHORITY

2. 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.

3. 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.*)

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

(a) “Developmental Disability” means a disability that is attributable to mental retardation<sup>2</sup>, 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

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<sup>2</sup> Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replaced it with the term “intellectual disability,” the California Code of Regulations has not been similarly amended.

- 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.”
5. 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.

## EVALUATION

6. Claimant's parents provided records that spanned from the time claimant was in third grade to present. While claimant's records indicated he had some difficulties with speech and language throughout his academic history, no record contained evidence to support the main diagnostic features of autism as listed in the DSM-5. Although Dr. Kotomori used the Sohn Grayson rating scale to assess claimant, diagnose him with Asperger's Disorder, and identify him as being on the "autism continuum," the Sohn Grayson rating scale is a screening device intended for children and adolescents. Given that claimant is 26 years old, the validity of Dr. Kotomori's diagnosis is questionable. Further, even assuming that claimant possessed a diagnosis of autism, there was insufficient evidence provided to establish that claimant's condition resulted in significant

functional limitations in three or more major life activities as required by the California Code of Regulations.

The love that claimant's parents have for claimant is evident; their testimony was heartfelt, sincere, and credible. They have tried very hard to obtain social services and life-skills training for their son to help him become more independent and retain employment, only to be rejected and told to seek services at regional center. Claimant would benefit from the types of services his parents seek. However, the criteria for eligibility under the Lanterman Act requires a diagnosis of autism under the DSM-5, together with evidence of significant functional limitations in three or more major life activities under the applicable provisions of the California Code of Regulations. Based on the evidence presented, these criteria have not been met.

## ORDER

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

DATED: April 13, 2016

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KIMBERLY J. BELVEDERE

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 ninety days.