

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,
Service Agency.

OAH No. 2016040016

DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California, on May 17, 2016.

Claimant's mother, represented claimant.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Appeals, Inland Regional Center, represented Inland Regional Center.

The matter was submitted on May 17, 2016.

ISSUE

Is claimant eligible to receive services from the Inland Regional Center based on the qualifying condition of Autism Spectrum Disorder?

FACTUAL FINDINGS

1. Claimant is a three year-old male who lives in the family home with his parents, (who are married to each other), and an older brother.
2. Claimant applied for regional center services from Inland Regional Center based on Autism Spectrum Disorder. As a result, a multidisciplinary review team

completed assessments, including a psychological assessment to determine a clinical diagnosis and to assist in determining whether claimant is eligible to receive regional center services.

On February 16, 2016, Neda Safvati, Ph.D., a licensed clinical psychologist, California Psychcare, performed the service agency's psychological assessment and thereafter issued a report. Dr. Safvati diagnosed claimant with Autism Spectrum Disorder.

On March 21, 2016, the service agency sent a Notice of Proposed Action informing claimant that it had been determined claimant to be ineligible for regional center services.

On March 28, 2016, claimant filed a Fair Hearing Request.

On April 7, 2016, the service agency conducted an informal meeting regarding claimant's fair hearing request. Participants in the meeting included claimant's mother and the service agency's representative (Stephanie Zermeño). During the meeting, the parties discussed the purpose of the meeting; claimant's mother described her concerns about claimant and provided a detailed explanation of her observations of claimant and the reasons she believes he requires assistance. The service agency concluded that claimant is not eligible to receive regional center services.

The service agency sent a letter, dated April 12, 2016, summarizing the results of the informal meeting held on April 7, 2016, and denying eligibility for services. As the reason for its action, the service agency stated: "although he has a diagnosis of Autism Spectrum Disorder, an evaluation of his adaptive functioning shows that he is not substantially disabled. . . . he does not have a substantially handicapping condition as required by law to be eligible for regional center services."

BACKGROUND

3. Claimant was born full term via vaginal delivery. His mother's pregnancy was difficult due to severe nausea, vomiting and heartburn. She received intravenous treatment weekly for dehydration for the first 25 weeks and then, as needed, in the

emergency room for the duration of the pregnancy. There were no complications during birth.

4. Due to delays in communication and social-emotional functioning, claimant has received services from the service agency since the age of 20 months under the Early Start Program. He has received speech therapy since he was 18 months old and began occupational therapy at two years of age. As of April 2016, he received speech therapy for 30 minutes twice a week and occupational therapy for 30 minutes twice a week through insurance. In addition, he received 50 hours per month of Floor Time therapy provided by the service agency, which was discontinued when he turned three years of age in April 2016. Finally, he received 14 hours per month of Applied Behavioral Analysis (ABA) therapy. No evidence was offered to establish the source of funding for the ABA therapy.

Claimant's brother is five years old and was diagnosed with Autism Spectrum Disorder when he was three years old. There is a history of Autism Spectrum Disorder and Asperger's syndrome diagnosis in claimant's parents' families.

MEDICAL HISTORY

5. With the exception of the diagnosis of Goldenhar Syndrome (mild), claimant has no other noteworthy medical condition.

SERVICE AGENCY ASSESSMENT

6. Michelle Lindholm, Ph.D., BCBA-D, testified as the service agency's psychologist. She holds a doctorate in psychology and is licensed as a psychologist. In addition, since 2014, she has been a board certified behavioral analyst at the doctoral level. She has been a service agency psychologist since 2011.

7. In determining eligibility, the service agency relies on the eligibility criteria for regional center services under the Lanterman Act and regulations; in determining whether an individual has Autism Spectrum Disorder, the service agency relies on the

diagnostic criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The diagnostic criteria for Autism Spectrum Disorder are:

- A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative not exhaustive, see text):
 - 1 Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
 - 2 Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
 - 3 Deficits in developing, maintaining, and understanding relationships, ranging for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interests in peers.

Specify Current Severity:

**Severity is based on social communication impairments
and restricted, repetitive patterns of behavior . . .**

- B Restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive, see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same routine or eat same food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative [sic] interests).
4. Hyper- or hyporeactivity [sic] to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

Specify Current Severity:

**Severity is based on social communication impairments
and restricted, repetitive patterns of behavior . . .**

- C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in early life).
- D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
8. In order to render her opinion, prior to the hearing, Dr. Lindholm reviewed

the record,¹ including Dr. Safvati's report, and the following documents:

- Temecula Valley Unified School District SELPA Individualized Education Program, IEP meeting date: April 20, 2016;
- Temecula Valley Unified School District Initial Team Assessment Report, assessment date: April 4, 2016;
- Temecula Valley Therapy Services – Speech and Occupational Therapy, initial examination (September 23, 2015), progress note (January 14, 2016) and progress note (February 16, 2016)

On the day of the hearing, Dr. Lindholm observed claimant and reviewed the Temecula Valley Therapy Services –ABA, initial assessment, report, dated December 3, 2015.

9. In her report, Dr. Safvati described the procedure that she followed to evaluate claimant. She reviewed the file (presumably the service agency's file), obtained background information through a clinical interview of claimant's mother and observed claimant; in addition, she administered the following tests: Developmental Profile, Third Edition (DP-3); Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2); Autism Spectrum Rating Scale (ASRS); and Adaptive Behavior Assessment System, 3rd Edition (ABAS-3).

10. Based on the developmental history, document review, parent interview, direct observation, results of standardized test instruments, Best Practice Guidelines, and the DSM-5 criteria, Dr. Safvati concluded that claimant has a diagnosis of Autism Spectrum Disorder.

11. In Dr. Lindholm's opinion, during Dr. Safvati's evaluation of claimant on February 16, 2016, claimant presented with characteristics that met criteria for Autism

¹ Dr. Lindholm defined "the record" as the service agency's exhibits.

Spectrum Disorder but did not exhibit substantial deficits in multiple areas of adaptive functioning. She described the objective test results that support her opinion.

12. Dr. Lindholm interpreted the diagnostic tests administered by Dr. Safvati.

13. In rendering her opinion about the diagnosis of Autism Spectrum Disorder, Dr. Lindholm relied on the results achieved by claimant on the ADOS-2 and on the ASRS.

The ADOS-2 is a clinician administered structured assessment instrument designed to obtain information in the areas of communication, reciprocal social interactions, and restrictive and repetitive patterns of behaviors and interests associated with a diagnosis of an Autism Spectrum Disorder.

Module I was selected because he is two years old and able to use single words. The following are the results obtained on this instrument.

Social Affect (SA)	Score
Frequency of Spontaneous Vocalization Directed to Others	2
Pointing	1
Gestures	1
Unusual Eye Contact	2
Facial Expression Directed to Examiner	1
Integration of Gaze and Other Behaviors During Social Overtures	1
Shared Enjoyment in Interaction	1
Showing	2

Spontaneous Initiation of Joint Attention	1
Quality of Social Overtures	1
SA total	13

Restricted and Repetitive Behavior (RRB)	Score
Stereotyped/Idiosyncratic Use of Words or Phrases	0
Unusual Sensory Interest in Play Material/Person	0
Hand and Finger Movements/Posturing	0
Unusually Repetitive Interests or Stereotyped Behaviors	2
RRB total	2
Total (SA+RRB)	15

According to the structured observation and ADOS-2 algorithm for some words, claimant's score (15), was above the autism cutoff, indicating that his classification is autism. His comparison score (5) indicates a moderate (rather than mild or severe)² level of symptoms compared to other children his age and language ability with autism.

The ASRS test is designed to measure behaviors associated with Autism Spectrum Disorder. The ASRS helps identify characteristics of Autism Spectrum Disorder in children and youth from age two to 18 years. Scores are reported as t-scores with a mean of 50 and standard deviation of 10. Claimant's mother completed the ASRS Parent ages 2-5

² Dr. Lindholm did not explain the diagnostic distinction between mild, moderate and severe Autism Spectrum Disorder

English form to assess symptoms of Autism Spectrum Disorder. The areas assessed included peer socialization, adult socialization, social/emotional reciprocity, atypical language, stereotype, behavioral rigidity, sensory sensitivity and attention. According to the responses, claimant's total score was in the Very Elevated range (t = 82). His score on the Social/Communication Scale was in the Very Elevated range (t = 73). His score on the Unusual Behaviors Scale was in the Very Elevated Range (t = 82).

The ASRS includes a sub-scale called the DSM-5 with items that are directly related to symptomatic criteria from the Diagnostic and Statistical Manual. The result of this sub-scale was in the Very Elevated range (t = 82).

14. In rendering her opinion about claimant's adaptive functioning, Dr. Lindholm considered the results achieved by claimant on the ABAS-3.

The ABAS-3 measures the adaptive behaviors of individuals from birth through adulthood. The ABAS-3 assesses adaptive behavior in the Conceptual, Social and Practical domains. This assessment differentiates between what an individual is or is not able to do, as well as the frequency of the behavior.

Claimant's adaptive skills were assessed using the ABAS-3. His mother completed the Parent/Primary Caregiver ages 0-5 English form. According to his mother's responses, his General Adaptive Composite was in the Low Range (GAC = 76) and at the 5th percentile rank. His Conceptual domain score was in the Low range (Conceptual = 76) and at the 5th percentile rank. His Social domain score was in the Below Average range (Social = 82) and at the 12th percentile rank. His Practical domain score was in the Below Average range (Practical = 82) and at the 12th percentile rank.

In Dr. Lindholm's opinion, the results/standard scores achieved by claimant do not indicate a substantial disability in any of the areas.

15. During Dr. Safvati's evaluation, claimant's intelligence "was not able to be assessed." She noted: "It is important that his cognitive functioning be assessed once he is

able to participate in standardized testing.”

16. Under recommendations, Dr. Safvati’s report stated:

- [Claimant] would benefit from ABA therapy focused on reducing problematic behaviors and increasing functional skills. It is recommended that he receive a Functional Behavior Assessment to identify the possible functions of inappropriate behaviors. ABA should be continuously re-evaluated and discontinued when behaviors are manageable by the parents.
- [Claimant] and family should be referred to their local public school district for a multidisciplinary preschool team assessment to determine eligibility and need for special education services when after three years of age. Appropriate educational placement in the least restrictive environment with all services deemed warranted (speech therapy, occupational therapy, autism intervention/Applied Behavior Analysis therapy, and/or sensory integration therapy) is recommended.
- It is recommended that the child be evaluated by a speech and language pathologist in order to determine if there is a speech disorder present and provide appropriate treatment.
- It is recommended that the child be evaluated by an occupational therapist in order to determine if there is a sensory processing disorder present and provide appropriate treatment.
- Claimant should continue to receive ongoing medical, dental, and related care.
- Claimant’s parents may wish to share this report with agencies that benefit from the information, such as medical, autism treatment/ABA, and/or school district personnel.

By the hearing date, Dr. Safvati’s recommendations had been implemented, and Dr.

Lindholm considered the evaluations.³

//

ASSESSMENT BY TEMECULA VALLEY THERAPY SERVICES

17. In December 2015, two months prior to Dr. Safvati's assessment, Temecula Valley Therapy Services evaluated claimant to determine if he was capable of participating in ABA therapy. This assessment included a parent interview to determine current skill levels and behaviors within home and community settings, observation of claimant in the home, and administration of the Vineland Behavior Scales 2nd Edition (Vineland-II)⁴ and Functional Analysis Screening Tool (FAST)⁵.

In rendering her opinion, Dr. Lindholm's considered claimant's performance on the Vineland-II. Claimant achieved the following results, as documented in the December 2015 assessment report from Temecula Valley Therapy Services.

Subdomain/Domain	Scaled/Standard Score	Adaptive Level
Communication Domain	84	Moderately Low
Daily Living Skills	95	Adequate

³ Exhibits A through D.

⁴ The Vineland-II is a measure of an individual's adaptive behavior. The Survey Interview form was used.

⁵ The FAST is a questionnaire to help with identifying the function of specific maladaptive behaviors.

ASSESSMENT BY TEMECULA VALLEY UNIFIED SCHOOL DISTRICT

18. In April 2016, two months after the service agency's assessment, the service agency referred claimant to the Temecula Valley Unified School District (district) for an educational assessment as part of the three-year transition process. The district completed the Individuals with Disabilities Education Act assessment. The purpose of the district's evaluation was to assist in claimant's education, determine eligibility for special education in the public school, arrive at an accurate educational classification and assist in developing an educational program.

The district's assessment procedure included:

- Review of records;
- Interviews;
- Observations;
- Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition;
- Bracken School Readiness Assessment – Third Edition – attempted;
- Berry-Buktenica Developmental Test of Visual-Motor Integration –Sixth Edition;
- Developmental Profile – Third Edition, parent interview (physical, adaptive and cognitive domains);
- Behavior Assessment System for Children, Third Edition, parent rating;
- Gilliam Autism Rating Scale – Third Edition – parent report;
- Speech and Language Assessment(s)

19. In rendering her opinion, Dr. Lindholm considered claimant's performance on the Developmental Profile – Third Edition (DP-3), a standardized and well-established

measure of child development performed by the district.

The DP-3 utilizes input from parent and caregivers to provide scores in several key areas of development. The scales are designed to assess the development and functioning of children from birth through age 12. Standard scores from 85-115 are considered the "average" range on this test.

Claimant achieved the following results.

DP-3 Scale	Standard Score	Classification	Age Equivalent
Cognitive	98	Average	31 months

This scale measures cognitive abilities in an indirect manner that is not by actually measuring intelligence and achievement, but by assessing the development of skills necessary for successful academic and intellectual functioning. Based on these results, his intellectual ability is in the average range.

DP-3 Scale	Standard Score	Classification	Age Equivalent
Adaptive Behavior	86	Average	27 months

Based on the results of this test, his functioning ranged between low average and average in adaptive functioning.

20. In rendering her opinion, Dr. Lindholm considered the language assessments considered and performed by the district.

Claimant was previously assessed using the REEL-3 at his private speech therapist's office on January 14, 2016. The results reported by his current speech-language pathologist indicated below-average communication skills (Receptive Language: 10th Percentile; Expressive Language: 8th Percentile).

The district administered the Preschool Language Scale – 5 (PLS-5), a standardized assessment measuring a child's receptive and expressive abilities in all areas of

communication.

Test	Standard Score	Percentile
PLS-5 Auditory Comprehension	96	39
PLS-5 Expressive Communication	85	15

Claimant's performance placed him in the average range for "Auditory Comprehension" and in the low average range for "Expressive Communication".

21. Of particular significance to Dr. Lindholm were comments in the district's assessment report, under summary, eligibility consideration and recommendations, which states in part:

Primary concerns appear to be in the area of social interaction and behavioral and emotional control. [Claimant's] behavior, however, was appropriate during the current assessment and did not impede his performance. Very few "autistic like" social and/or communication impairments were observed. He demonstrated joint attention, shared enjoyment and appropriate play skills. While there were not significant behaviors noted that would appear to impair his ability to learn and participate in appropriate preschool activities, [claimant] has a clinical diagnosis of autism spectrum disorder and a history of intensive early intervention. Social/peer interactions and behaviors in a social setting were not able to be observed during this assessment, which would have been an area of reported concern/difficulty.

Claimant meets special education eligibility guidelines at this time for having articulation impairment. Although he does not fully meet eligibility guidelines for a language delay, there are also expressive language skills that should be addressed. The IEP team should consider eligibility for speech/language services in the area of Speech or Language Impairment.

SERVICE AGENCY'S CONCLUSION ABOUT ELIGIBILITY

22. In Dr. Lindholm's opinion, claimant is not eligible to receive regional center services.

Initially, Dr. Lindholm agreed that claimant's diagnosis of Autism Spectrum Disorder was accurate, albeit mild. In her conclusion, Dr. Lindholm stated claimant does not consistently demonstrate characteristics of a full syndrome of Autism Spectrum Disorder. She did not clarify this opinion.

However, Dr. Lindholm's opinion focused on claimant's adaptive functioning. In December 2015, Temecula Valley Therapy Services evaluated claimant to determine if he is capable of active participation in ABA therapy. In February 2016, the service agency evaluated claimant to ascertain whether he is eligible to receive regional center services. In April 2016, the district evaluated claimant to determine whether he is eligible to receive special education services. As part of each evaluation, diagnostic tests were administered. In April 2016, Temecula Valley Therapy Services issued a report regarding claimant's progress with ABA services.

The evaluations over the four-month period of time were consistent. His adaptive functioning is in the low average to average range; as such claimant does not show substantial disabilities in multiple areas of adaptive functioning and therefore is not eligible to receive regional center services.

23. Temecula Valley Therapy Services completed a report, dated April 14, 2016, describing claimant's participation and progress in ABA therapy. The report states, in part:

Since starting ABA therapy with TVTS, [claimant] has made progress with all his goals and continues to show progress in his developmental goals. The team has consistently been working on various goals in order for [claimant] to increase his functional communication training, social skills, and daily living skills, while implementing a behavior plan in order to decrease his maladaptive behaviors. . . .

This report has no impact on the service agency's opinion about eligibility. However, in Dr. Lindholm's opinion, claimant is making progress with the services he is receiving, and those services should be continued. This report supports her opinion. According to this report, claimant is making good progress in all goals that had been set. In terms of adaptive functioning, he is making progress at the moderately low to adequate skill levels. The ABA provider is working on improving claimant's moderately low functioning skills and is attempting to bring these skills up to age level so that claimant can perform in the average range in all areas, not just in the several areas in which he is in the average range.

CLAIMANT'S POSITION

24. Claimant's older brother is a client of the service agency on the basis of Autism Spectrum Disorder. As such, claimant's mother is familiar with the symptoms of the condition and the services available through the service agency. She wanted to make sure that claimant is receiving the services he needs.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512 states, in part:

(a) "Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

[¶] . . . [¶]

(l) "Substantial disability" means 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: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency. . . .

2. California Code of Regulations, title 17, section 54000, states:

(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 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.

3. California Code of Regulations, title 17, section 54001, states in pertinent part:

- (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. . . .

4. As claimant seeks eligibility, he bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

5. Claimant is a three-year old male who lives at home with his parents and older brother. He receives speech, occupational and ABA therapy services. Claimant has been diagnosed with Autism Spectrum Disorder. He has deficits in expressive and receptive language. He does not show substantial disabilities in multiple areas of adaptive functioning. As such claimant does not meet the eligibility criteria.

6. Claimant is not eligible to receive regional center services at this time.

//

//

//

ORDER

The appeal of claimant is denied. Claimant is not eligible to receive services from the Inland Regional Center.

DATED: May 31, 2016

_____/s/____

VALLERA J. JOHNSON

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.