

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

OAH No. 2016040018

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on May 19, 2016.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant. After waiting approximately one hour, the case was called and Inland Regional Center established that satisfactory service had been effectuated on claimant. IRC elected to proceed with a prove-up hearing.

The matter was submitted on May 19, 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 5, 2016, IRC notified claimant, a five-year-old girl, that she was not eligible for regional center services because the records provided to IRC did not establish that she 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 March 28, 2016, claimant's authorized representative filed a Fair Hearing Request appealing IRC's determination. In the fair hearing request, claimant's representative wrote:

The condition of the child merits attention of the Regional Center. Before making a final conclusion to deny, please see the child. It is a must to see the child. All the people who have close contact with [claimant], foster mother, teachers & social worker [sic], believe there is a need for services.

3. On April 14, 2016, claimant's authorized representative and IRC representatives attended an informal meeting. Claimant's authorized representative provided a detailed explanation as to why she believed claimant qualified for regional center services. IRC explained that claimant's records showed she is being served by the school district for Specific Language Impairment, which is not a qualifying condition under the Lanterman Act. IRC further explained that, other than one passing reference to autism in a doctor's note, none of the medical records provided by claimant contained a diagnosis of autism or suggested a possible diagnosis of autism.

4. IRC adhered to its original determination that claimant was not eligible for regional center services.

5. OAH sent a Notice of Hearing to claimant's authorized representative at the address she provided on the Fair Hearing Request. IRC also sent a letter to the same address on May 10, 2016, reminding claimant's authorized representative of the hearing date. The jurisdictional documents showed that claimant's authorized representative was properly served and notified of the hearing date and time.

6. Claimant's authorized representative did not appear at the hearing, and no evidence was presented on behalf of claimant.

#### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

7. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria includes 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 under autism.

#### EVIDENCE PRESENTED BY IRC

8. IRC reviewed and considered the following documents submitted by claimant's authorized representative: claimant's Individualized Education Program Plan (IEP) from her school district, dated February 23, 2016; an Initial Multidisciplinary Team Assessment Report, dated January 8, 2015; and a certificate of return to work/school dated September 24, 2014.

9. The February 23, 2016, IEP is the most recent document to consider

claimant's educational progress. The IEP described claimant's reading abilities as follows:

[Claimant] likes to look at books on her own and have books read to her. She can make predictions about what will happen in a story and is able to retell known short stories with a beginning, middle and end. [Claimant] is able to find her name in print and the names of her peers. [Claimant] is able to receptively identify 26 uppercase letters, expressively she is able to identify 10 uppercase letters and knows 14 letter sounds. [Claimant] is able to find words that start with a stated letter and can track words with her finger in emergent readers.

Claimant's progress in writing and math are similarly exceptional. There were no notations in the IEP regarding claimant's reading, writing, or communication abilities being limited in any way. Out of six listed educational goals, claimant met or partially met each goal, with the exception that she exhibited difficulty following directions.

The portion of the IEP that summarizes social, emotional, and behavioral deficits specifically stated that claimant did not exhibit any deficits in social or emotional communications. The IEP noted she loves to play with her peers; is aware of her own feelings; is aware of others' feelings; and shares with everyone.

With respect to behavior, the IEP described claimant's hyperactive behavior in detail. Claimant does not like to follow instructions, and although she can focus her attention on the task at hand at times, she often becomes stubborn and refuses to comply with teachers' directions.

Nothing in the IEP demonstrated persistent deficits in social communication; social interaction; restricted repetitive and stereotyped patterns of behavior; or significant

impairment in social, occupational, or other important areas of function. Nothing in the IEP showed that claimant has a substantial disability as a result of autism.

10. The multidisciplinary team assessment report completed on January 8, 2015, is in accord with the most recent IEP. Based on the assessment, the team concluded that claimant may meet the criteria for Speech and Language Impairment. Her test results indicated that the primary concerns were in the areas of social and emotional functioning, adaptive behavior, and hyperactivity. Again, nothing in the report demonstrated persistent deficits in social communication, social interaction, restricted repetitive and stereotyped patterns of behavior, or significant impairment in social, occupational, or other important areas of function. Nothing in the report showed that claimant has a substantial disability as a result of autism.

11. The oldest document submitted by claimant's authorized representative was a September 24, 2014, certificate to return to work/school. It was a one page letter signed by Jana Webb, D.O. The certificate stated the following:

[Claimant] has a diagnosis of autism spectrum disorder and severe language delay. She needs immediate therapy and or treatment for her delay.

The certificate did not contain any reports or other supporting documentation to indicate where Dr. Webb obtained the information that claimant has a diagnosis of autism. Further, the certificate was intended to serve as an excuse for absences; it was not a formal report following a professional assessment for the purpose of rendering a diagnosis. Accordingly, neither the certificate nor its content established that claimant had a diagnosis of autism.

## 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>1</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:

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<sup>1</sup> 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.

- (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.
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. The burden was on claimant to establish her eligibility for regional center services. None of the documents introduced in this hearing established that claimant has autism. Indeed the documents showed quite the contrary; they appeared to establish that claimant suffers from a speech and language disorder and hyperactivity, which do not qualify her for services under the Lanterman Act. The certificate of return to work/school was unreliable and conclusory such that it could not be considered to support a diagnosis of autism. Finally, no evidence established that claimant is substantially disabled in three or more major life activities.

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## ORDER

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

DATED: May 24, 2016

\_\_\_\_\_/s/\_\_\_\_

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.