

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. 2016110032

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on January 5, 2017.

Claimant's parents, his legal guardians, represented claimant, who was present at the fair hearing.

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

The matter was submitted on January 5, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of autism or intellectual disability which constitutes a substantial handicap?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On October 4, 2016, IRC notified claimant that he was not eligible for regional center services.
2. On October 18, 2016, claimant's parents filed a fair hearing request appealing that decision and this hearing ensued.

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5)*, identified 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 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.

### DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

4. The *DSM-5* also contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: Deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. An individual must have a *DSM-5* diagnosis of intellectual disability to qualify for regional center services. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range.

## EVIDENCE PRESENTED AT HEARING

5. Claimant is a 21-year-old male. He asserted he was eligible for services on the basis of autistic disorder and intellectual disability.

6. A February 6, 2013, Educational Evaluation, performed when claimant was 17 years, six months old, documented the following: Claimant's written language standard score was within the low average range, his reading standard score was within the low range, his mathematics standard score was within the very low range, his written expression standard score was within the low average range, and his mathematics calculation skills were within the low average range. Overall claimant's academic and fluency skills were limited and his ability to apply his academic skills were very limited. Nothing in this evaluation established eligibility for regional center services.

7. A February 19, 2014, Educational Evaluation, performed when claimant was 18 years, seven months old, documented the following: Claimant's written language standard score was within the low average range, his reading standard score was within the low range, his mathematics standard score was within the very low range, his written expression standard score was within the low average range, and his mathematics calculation skills were within the low range. Overall claimant's academic and fluency skills were limited and his ability to apply his academic skills were very limited. Nothing in this evaluation established eligibility for regional center services.

8. Claimant's February 24, 2014, Individualized Education Plan (IEP), performed when he was in twelfth grade, identified his primary disability as "Other Health Impairment" and his secondary disability as "None." The box marked "Non-severe Disability" was checked off. The IEP noted that claimant was "completely mainstreamed" and had access to the Special Academic Instruction class where he can receive "one-on-one support." Claimant required a "quiet and distraction free environment" and his mother would like him "to have more confidence in himself, complete his high school credits and find a job that he enjoys." The IEP noted that

claimant is "a hard worker with a good attitude." His writing was identified as "a relative strength for [claimant] testing close to 8th grade in both writing and spelling." Claimant "has a good work ethic and will do what he needs to in order to be successful." Claimant tested below grade level for reading, math and written expression. The IEP Meeting Notes documented claimant's strengths as "hard worker, diligent, polite" and his mom would like him to "have more confidence and possibly pursue a career in voice over work or communication." Nothing in the IEP established that claimant was eligible for regional center services.

9. A July 9, 2016, Neuropsychological Assessment, conducted when claimant was 20 years, 11 months old, by a pediatric neuropsychologist, noted that claimant's therapist referred him for the evaluation. In the History of Presenting Problems claimant was noted to be anxious and worried, including worried about how he looks and performance anxiety. He fixates on several topics, including worrying if his Facebook picture looks good. He is sensitive to sounds, has difficulty expressing himself, and keeps his room in a particular order. The Developmental History section noted claimant was born with his umbilical cord wrapped around his neck, had anoxia, and spent the first two weeks of his life in the NICU. While a pre-teen he had appetite difficulties, lost 30 pounds, and had a feeding tube placed. Claimant received pullout services in school for a non-verbal learning disorder, speech therapy, was in a special day class in sixth grade and attained a certificate of completion in 2014. Claimant worked as a busboy, is a Department of Rehabilitation client, volunteers at his church, has a few friends, is very shy, and is a loving child who helps around the house. The Previous Testing section noted an IQ score of 70 in 2014.

Several cognitive tests were administered and two autism rating scales were performed. Claimant presented as quiet, friendly and cooperative. He self-reported being nervous, but engaged in conversation with the examiner, initiated some of the conversation and offered some of his snack to the examiner. His response times were

slow. His eye contact was largely within normal limits, and he used gestures while communicating. Claimant obtained a Full Scale IQ Score of 68, a Verbal Comprehension Score of 72, a Perceptual Reasoning Score of 71, a working Memory Score of 74, and a Processing Speed Score of 76. Except for his Full Scale Score that was in the Impaired Range, all other scores were in the Low Average or Borderline Ranges. On his achievement tests claimant's reading comprehension score was Impaired, but all other scores were in the Low Average or Borderline Ranges. Claimant's basic attention was low average, demonstrating a high likelihood of ADHD.

Claimant's adaptive behavior functioning scores were in the borderline range for overall adaptive functioning, impaired range for managing money, health and safety practices, low average for managing home and transportation, and were average for memory, orientation and social adjustment. Claimant's parents completed two autism rating scales. Both tests indicated that claimant "possibly has Autism Spectrum Disorder." The examiner completed an autism rating scale and concluded that claimant had mild-to-moderate symptoms of Autism Spectrum Disorder.

Based upon his testing and assessment, the examiner concluded that claimant had the following diagnoses: Autism Spectrum Disorder, Level 1, Requiring support; ADHD, Predominantly Inattentive presentation; Borderline Intellectual Functioning; and Unspecified Anxiety Disorder.

#### WITNESS TESTIMONY

10. Paul Greenwald, Ph.D., reviewed the records to determine if claimant was eligible for services due to a diagnosis of intellectual disability or autism. Dr. Greenwald reviewed the IEP, the neuropsychological assessment and the two evaluations that he described as achievement tests that "correlate fairly robustly with IQ tests" although they are not the same thing. Dr. Greenwald noted that claimant's cognitive test scores were varied; explaining that a person with an intellectual disability will have universally

impaired scores, claimant did not. Moreover, an intellectual disability diagnosis cannot be made solely on one test score; the Full Scale IQ score of 68, alone, is insufficient to make the diagnosis. Instead, all of the subtests and various test scores must be evaluated. Here, those tests demonstrated variable scores ruling out a diagnosis of intellectual disability. In fact, the neuropsychologist who performed the neuropsychological assessment did not give claimant that diagnosis; instead he only diagnosed claimant with Borderline Intellectual Functioning. That diagnosis is not a regional center qualifying diagnosis.

Dr. Greenwald disagreed with the Autism Spectrum Disorder diagnosis reached by the neuropsychologist. Dr. Greenwald explained that the neuropsychological assessment contained "internal inconsistencies," calling the autism diagnosis into question. For example, claimant self-reported feeling nervous, worried about his Facebook picture, was concerned about how he was perceived, volunteered at his church, and was friendly and cooperative during the examination, making good eye contact and engaging in conversation, all things that are atypical for a person with autism. Moreover, the autism screening tests are just that, screening instruments, they are not tests for autism. Dr. Greenwald noted that claimant's school records also did not support that diagnosis.

11. Claimant's parents testified about their son's condition, and their anguish that they did not have him tested earlier; expressing concern that their failure to do so now caused him to be ineligible. However, as Dr. Greenwald explained and as the records demonstrated, claimant did not have a qualifying condition before age 18. Even if he had been tested, it is highly unlikely he would have a regional center qualifying condition. Moreover, given that claimant was fully mainstreamed in high school and no qualifying condition was ever identified in his IEP or assessments or by his teachers, who presumably saw him every day, it is highly unlikely he had a qualifying developmental disability before age 18. Thus, his parents should not despair over their failure to have

their son tested before age 18 as there is no evidence to support a reasonable belief that claimant had autism or an intellectual disability before age 18, nor is there support for either diagnosis now.

## 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.

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 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.

5. 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 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.
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.

## EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. None of the documents introduced in this hearing demonstrated that claimant had a diagnosis of

intellectual disability. Although claimant's neuropsychologist diagnosed him with autistic spectrum disorder, that diagnosis was questionable given the conflicting information contained in the neuropsychological report, as well as the other records introduced at hearing that showed claimant did not have that diagnosis. Claimant had the burden of establishing his eligibility for regional center services. As claimant introduced insufficient evidence demonstrating that he was eligible to receive regional center services, his appeal of IRC's determination that he is ineligible to receive services must be denied.

## ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services and supports is denied. Claimant is ineligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: January 9, 2017



MARY AGNES MATYSZEWSKI

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.**