

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Continuing Eligibility of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020166

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 21, 2017.

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

Claimant's mother appeared on behalf of claimant, who was not present.

The matter was submitted on March 21, 2017.

ISSUE

Is IRC's previous determination that claimant was eligible for regional center services under the Lanterman Act based on a diagnosis of autism "clearly erroneous" today in light of the comprehensive reassessment completed by IRC?

## FACTUAL FINDINGS

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

1. 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.

### CLAIMANT'S BACKGROUND

2. Claimant is an eight-year-old female who was determined eligible for regional center services in 2012 based on a diagnosis of autism. Although claimant has been eligible for services since 2012, claimant's mother has never requested services from regional center. Claimant's Individualized Program Plan (IPP) stated that claimant experiences difficulties with her speech, and she receives speech therapy one time per week through her school district. Claimant needs some assistance with self-care. The IPP described claimant as a happy child who smiles a lot. Claimant is able to initiate and maintain interactions in familiar situations and settings. Claimant has friends at school. According to claimant's mother, claimant can display disruptive social behavior and emotional outbursts. She has displayed aggression towards her siblings by throwing things at them and pulling their hair. Claimant will try to run away while at the store.

3. In 2012, IRC Staff Psychologist Michelle Lindholm completed a psychological assessment of claimant. At the time of the assessment, claimant was three years old. Dr. Lindholm completed the Wechsler Intelligence Scale for Children, Third Edition, and the Autism Diagnostic Observation Schedule, Module 1 (ADOS1), among other assessments. Claimant exhibited extremely low scores in verbal comprehension and general language. Claimant's individual scores on the ADOS also fell within the range for autism. Thus, Dr. Lindholm determined claimant was eligible for IRC services in 2012.

4. Claimant's most recent Individualized Education Program plan (IEP) completed in 2016, showed claimant receives special education services from her school district based on speech delays and autism. The corresponding psychoeducational assessment, however, does not support a finding of autism. That report, completed on June 1, 2016, showed that claimant was well below the cutoff score for autism on the Autism Diagnostic Observation Scale, Second Edition (ADOS2), and fell into the lowest category on the Childhood Autism Rating Scale, Second Edition (CARS2), showing minimal or no symptoms of autism. Nonetheless, because claimant exhibited some behaviors that were autistic-like, the assessing psychologist concluded claimant met the criteria for special education services under Title 5 of the California Code of Regulations.

5. IRC Staff Psychologist Paul Greenwald, Ph. D., conducted a psychological reassessment of claimant in October 2016. Based on the overall comprehensive reassessment, Dr. Greenwald concluded that claimant no longer met the diagnostic criteria for autism and was no longer eligible for regional center services.

6. On October 31, 2016, IRC notified claimant that she was no longer qualified for regional center services under the Lanterman Act. Claimant timely filed a fair hearing request; this hearing ensued.

## EVIDENCE PRESENTED AT HEARING

7. Dr. Greenwald has been a licensed psychologist since 1987. He is licensed in California and Florida. He has been a staff psychologist at IRC since 2008. Dr. Greenwald has extensive experience in conducting psychological assessments of children and adults suspected of having developmental disabilities that may qualify them for regional center services. He also supervises psychological assistants who conduct similar assessments. Dr. Greenwald is an expert in the field of psychology, as it relates to the diagnosis of autism under the DSM-5 and the Lanterman Act. Dr. Greenwald testified about his reassessment of claimant. The following is a summary of his testimony and the report he completed memorializing his reassessment.

8. Dr. Greenwald reviewed and considered all prior psychological assessments and applicable medical records in claimant's file prior to conducting his own reassessment. Dr. Greenwald administered the Kaufman Brief Intelligence Test (KBIT), the ADOS2, the CARS2, and the Vineland Adaptive Behavior Scales, Second Edition (Vineland).

9. Dr. Greenwald found claimant's IQ to be 88, which is within the average range. Claimant's individual scores across the subsets of the KBIT showed a marked improvement over scores achieved in previous assessments.

10. Dr. Greenwald explained that the ADOS2 is the "gold standard" in determining whether a child has autism. The ADOS2 is a standardized, comprehensive assessment measure that tests developmental abilities and language skills. It consists of structured play activities and is the only measure that permits an observer to assess a person in real time, as opposed to a backwards looking rating scale. On the ADOS2, Dr. Greenwald found claimant's score was well beneath the cutoff range for autism. She scored a five, which is two standard deviations below a score of seven, the score claimant previously received when tested by her school district. While both scores are

below the cutoff for autism, claimant's lower score of five – and thus movement farther away from the lowest cutoff number - is consistent with her language improvement and verbal comprehension improvement shown on the KBIT.

11. On the Vineland, which is a rating scale, claimant scored in the moderately low range in interpersonal relationships, play, coping skills, and leisure time. Dr. Greenwald noted, however, that despite the low range in these areas, overall, claimant was not found to be deficient in her developmental abilities.

12. During the assessment, Dr. Greenwald observed that claimant used appropriate social emotional reciprocity for the particular activities and she did not exhibit any stereotyped or repetitive motor movements, visual, auditory, tactile, or other sensory distractions.

13. The CARS2 rated claimant in the following areas: relating to people, imitation, emotional response, body use, object use, adaptation to change, visual response, listening response, taste, touch, smell, responses and use, fear or nervousness, verbal communication, nonverbal communication, activity level, intellectual response, and general impressions. Claimant's scores across most subsets were age appropriate. The CARS2 according to Dr. Greenwald, has proven especially effective in differentiating children with autism from those with cognitive defects, and distinguishing mild to moderate autism from severe autism. Overall, claimant's total score was 20, which indicated minimal or no symptoms of autism (mild to moderate cutoff score for autism is 30).

14. Dr. Greenwald concluded that claimant did not meet the criteria for autism under the DSM-5. He rendered no diagnosis. He explained, however, that some of claimant's autistic-like behaviors (i.e. spinning in the chair) could be indicative of some other type of non-qualifying disorder like Attention Deficit Hyperactivity Disorder.

## EVIDENCE PRESENTED BY CLAIMANT'S MOTHER

15. Claimant's mother testified she believes claimant has autism. She said she understands that there are different criteria used by the school district than those under the Lanterman Act, but she did not think it was acceptable to tell someone that even though they have autism, they cannot receive services.

16. IRC's representative explained, as she had during the informal meeting that took place on February 3, 2017, that IRC did not determine in the reassessment that claimant had autism, and despite findings of autistic-like behaviors, such behaviors do not qualify claimant for regional center services.

17. Claimant's mother provided a letter from Jennifer Leung, M.D., concluding claimant's "history and presentation [are] consistent" with a diagnosis of autism. Dr. Leung did not testify and the letter did not include any psychological assessments completed in order to render that opinion. Dr. Greenwald reviewed Dr. Leung's letter and stated it did not change his conclusion. He noted that a medical doctor does not conduct psychological assessments, and it appeared Dr. Leung relied only on prior medical records in support of her opinion.

## LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the

original determination that the individual has a developmental disability is clearly erroneous.

3. In a proceeding to determine whether a previous determination that an individual has a developmental disability “is clearly erroneous,” the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish by a preponderance of the evidence that its previous eligibility determination “is clearly erroneous.”

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 also 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 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.

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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.

- (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 be eligible for regional center services. Welfare and Institutions Code section 4643.5, subdivision (b), authorizes the regional center to

reassess clients to determine if a diagnosis previously made is currently correct. That is to say, the issue is not whether a diagnosis made in the past was correct; but rather, given how claimant currently presents, would that same diagnosis be given today?

Dr. Greenwald completed a comprehensive assessment of claimant in October 2016, which yielded scores well below the autism cutoff. Dr. Greenwald did not observe any persistent or repetitive behaviors. Claimant's IQ was low, but still within the average range. Claimant's language ability had markedly improved since the 2012 assessment. Claimant's scores on the Vineland were moderately low, but not deficient. In sum, Dr. Greenwald's comprehensive reassessment established claimant no longer meets the criteria for autism under the DSM-5. No expert testimony was provided on behalf of claimant to contradict Dr. Greenwald's conclusion.

Accordingly, the prior determination that claimant was eligible for regional center services under a diagnosis of autism is clearly erroneous, in light of Dr. Greenwald's comprehensive reassessment. As a result, claimant is no longer eligible for regional center services under the Lanterman Act.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services is denied.

DATED: March 24, 2017

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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.