

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017040665

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 11, 2017.

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

Claimant's guardian appeared on behalf of claimant who was present.

The matter was submitted on May 15, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder or Intellectual Disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On March 21, 2017, IRC notified claimant's guardian that claimant, who is six years old, was not eligible for regional center services because the records 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 April 5, 2017, claimant's mother filed a fair hearing request appealing IRC's determination. This hearing ensued.

#### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER (AUTISM)

3. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) identifies criteria for the diagnosis of autism. 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.

#### DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

4. The DSM-5 contains the diagnostic criteria used to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social

responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range.

The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers.

#### EVIDENCE PRESENTED AT HEARING

5. Michelle Lindholm, Ph.D., BCBA-D, is a licensed clinical psychologist and board certified behavior analyst. Dr. Lindholm received her doctorate in clinical psychology in 2007 and completed coursework in applied behavior analysis in 2013. She began working at IRC as a psychological assistant in 2003 and as a clinical psychologist in 2011. Among her responsibilities are to conduct psychological evaluations of children and adults to determine eligibility for services and participate in interdisciplinary team meetings.

6. Claimant began receiving special education services through his school district in December 2013 under the category of Speech or Language Impairment (SLI). In a February 3, 2017, Individualized Education Program (IEP), the district changed the primary disability to Autism, with a secondary disability of SLI. The IEP noted that claimant is extremely impulsive and Claimant's guardian reported that claimant takes medication for Attention-Deficient Hyperactivity Disorder (ADHD). The social assessment in the IEP stated that claimant is very social with his peers, friendly with familiar and unfamiliar people, and shows affection to peers and familiar adults. Dr. Lindholm testified that this assessment reflects characteristics that are not associated with autism.

7. A medical evaluation was completed on November 8, 2016, by Dr. W. Thomas,<sup>1</sup> for the purpose of determining eligibility for regional center services. Dr. Thomas determined claimant was not eligible for regional center services, but noted he should be referred for a psychological evaluation without explanation.

8. The district conducted a psychoeducational evaluation on February 10, 2017. As part of the evaluation, the district administered several standardized assessments. Dr. Lindholm testified that the results, which indicated scores in the high borderline and low average range, did not indicate claimant has an intellectual disability.

The Adaptive Behavior Assessment System – Second Edition (ABAS-II) assessment was also administered to determine claimant’s adaptive skills. His general adaptive composite score was 79, which was in the low range. The Behavior Assessment System for Children (BASC-2) is designed to examine a student’s social/emotional behavior in different environments. According to the report, the pattern of scores indicated that claimant exhibited many of the associated features characteristic of Autism Spectrum Disorder; however, he had few symptoms directly related to the diagnostic criteria. The report did note claimant engaged in repetitive activities and stereotyped movements; was resistant to environmental changes or change in routine; and displayed unusual responses to sensory experiences. Dr. Lindholm testified that claimant had some features of autism, but did not have the deficits in social interaction and communication required of a DSM-5 diagnosis of Autism Spectrum Disorder. Dr. Lindholm explained that the criteria for a diagnosis of Autism for purposes of special education are not as strict as the criteria under the DSM-5.

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<sup>1</sup> There was no information in the report as to the doctor’s qualifications or credentials.

## TESTIMONY OF CLAIMANT'S GUARDIAN

9. Claimant's guardian testified that she has cared for claimant since he was eight months old. Claimant's guardian said claimant received Early Start services from regional center until he was three years old. She began noticing claimant displayed some unusual characteristics: he walked on his tip-toes, he was extremely sensitive to clothes and material, and he was easily irritated by certain tactile sensations. She has gone to multiple people for help and they all referred her to IRC. She testified about claimant's ADHD and the difficulties he has concentrating. She said she still has to bathe claimant and wipe him, and he has not developed to an age appropriate level.

10. Claimant submitted a letter from his medical provider stating he receives treatment for ADHD.

## 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 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

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<sup>2</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.

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.

6. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

## CONCLUSION

7. The burden was on claimant to establish his eligibility for regional center services. Claimant did not present sufficient evidence to establish that he has autism or an intellectual disability. Although the most recent evaluation conducted by claimant's school district show a diagnosis of Autism and ADHD, the diagnostic criteria for receiving special education services is not as strict as the criteria under the DSM-5. Claimant does exhibit some autistic-like characteristics. Specifically, claimant engaged in repetitive activities and stereotyped movements; was resistant to environmental changes or change in routine; and displayed unusual responses to sensory experiences. However, in order to qualify for regional center services under the Lanterman Act, claimant must not only display autistic-like characteristics, he must meet the criteria for Autism under the criteria utilized in the DSM-5. Claimant did not have deficits in social interaction and social communication across multiple contexts, which are required for a DSM-5 diagnosis.

8. Claimant is also not eligible for regional center services as a result of an intellectual disability. The cognitive testing revealed results significantly higher than scores that would be expected from someone with an intellectual disability. Moreover,

even assuming claimant had cognitive deficit, there was insufficient evidence to establish that claimant had a substantial disability as a result of the deficiencies.

9. Claimant was observed at the hearing to be a sweet, inquisitive child. His guardian's testimony was heartfelt, emotional, and sincere. It is clear that she wants nothing but the best for him. However, on this record, claimant failed to establish he is eligible for regional center services at this time.

## ORDER

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

DATED: May 23, 2017

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ADAM L. BERG

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.**