

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017060585

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 28, 2017.

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

Claimant's aunt represented claimant, who was present.

The matter was submitted on September 28, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of Autism Spectrum Disorder (ASD) or intellectual disability?

FACTUAL FINDINGS

PROCEDURAL HISTORY

1. Claimant is a 42-year-old woman who lives with her aunt.

2. On May 8, 2017, IRC sent a Notice of Proposed Action notifying claimant that she was not eligible for regional center services because claimant did not establish that she has 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.

3. On June 2, 2017, claimant filed a fair hearing request contesting IRC's decision.

4. On June 9, 2017, claimant's aunt and IRC staff attended an informal meeting to discuss claimant's eligibility. After the meeting, IRC maintained its decision that claimant was not eligible for regional center services under a diagnosis of autism or intellectual disability.

#### EVIDENCE PRESENTED BY IRC

5. Sandra Brooks, Ph.D., IRC staff psychologist, testified at the hearing. Dr. Brooks has been a staff psychologist for ten and a half years. Her duties include assessing potential clients for eligibility under the Lanterman Act.

Dr. Brooks reviewed the following documents, which were received into evidence: IRC Social Assessment dated February 17, 2012; Client report dated October 3, 2016, which included the results of WAIS-IV testing performed on September 29, 2016; Summary of PAI Assessment dated February 16, 2017; and Referral to Regional Center or Autism Treatment Center letter dated February 27, 2017. In addition, Dr. Brooks reviewed two documents claimant presented at the hearing and which were also received into evidence: Psychiatric Progress Note from Andrew Tamanaha, Ph.D., and a document dated June 1, 1987, from the Los Angeles Unified School District (LAUSD) captioned "Student Health Services Mental Health Services."

Dr. Brooks testified that claimant does not qualify for regional center services under the ASD or intellectual disability categories. Dr. Brooks based her opinion on her

review of the records received into evidence, consistent with the criteria for eligibility for regional center services under the Lanterman Act and the criteria under the Diagnostic and Statistical Manual of Mental Disorders- Fifth Edition (DSM-5). The DSM-5 diagnostic criteria for autism 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.

Regarding whether claimant qualifies for regional center services under the autism category, Dr. Brooks testified that in her opinion claimant suffers from schizophrenia, not ASD, although she acknowledged that symptoms of schizophrenia may overlap with symptoms of ASD.

In reaching her opinion, Dr. Brooks discounted claimant's treating psychologist, Dr. Tamanaha's, "comorbid" diagnosis of ASD, as he wrote in the "Referral for Regional Center" letter dated February 27, 2017.<sup>1</sup> She explained that the evidence of record shows that claimant's symptoms are more appropriately identified as symptoms of schizophrenia than ASD, and also "there is no way to prove that claimant has ASD" without an earlier diagnosis or indications that she had distinct features of ASD, like arm flapping or spinning. Without such evidence, she stated that claimant's schizophrenia makes it "very difficult" to make a differential diagnosis of ASD due to the overlap of symptoms of ASD and schizophrenia.

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<sup>1</sup> Dr. Tamanaha diagnosed claimant with ASD with accompanying intellectual impairment, Unspecified Schizophrenia Spectrum and Other Psychotic Disorder and Unspecified Depressive Disorder.

Dr. Brooks supported her opinion that claimant's symptoms are more appropriately related to schizophrenia than ASD based on the following evidence of record. In a progress note dated April 14, 2013, claimant's aunt was concerned about claimant because she "is back sliding, talking to herself and very paranoid." Paranoia, Dr. Brooks stated, is more consistent with schizophrenia than ASD. In his "Referral to Regional Center" letter dated February 27, 2017, Dr. Tamanaha noted that claimant has a "history of auditory hallucinations" and was observed responding to unseen stimuli and a psychiatrist is treating her with antipsychotic medications. In this same letter, Dr. Tamanaha noted that claimant had a "psychotic break" when she was eight years old due to "trauma," which her aunt testified was caused by sexual abuse.

Dr. Brook did not change her opinion based on the June 1, 1987, LAUSD Mental Health Services record claimant submitted at the hearing. This record documented that claimant "throws objects at other students," "mumbles," "constantly stammers," "(m)akes unusual sounds i.e. animal sounds," and "(s)eems to be in a world of her own." She again emphasized that these behaviors can be symptoms of schizophrenia and ASD and are, thus, not distinctive to ASD as opposed to schizophrenia.

Regarding whether claimant qualifies for regional center services under the intellectual disability category, Dr. Brooks found that claimant's schizophrenia has impaired her intellectual functioning, and that her intellectual functioning declined due to schizophrenia over the years. Moreover, there is no evidence that she had such impaired intellectual functioning before she turned 18. Thus, she could not conclude that claimant qualifies under this category.

Dr. Brooks recognized that claimant has low to very low intellectual functioning in a number of assessed areas. According to the results of the Wechsler Adult Intelligence Scale -Fourth Edition (WAIS), Dr. Tamanaha administered on claimant to assess her intellectual functioning, she has an "extremely low" full range IQ of 69, and low memory

functioning. Other intellectual assessment measures, including visual perception, ranged from borderline to low average. The WAIS, Dr. Brooks stressed, was administered when claimant was 41 years old and the results of this testing do not establish that she had an intellectual disability before she turned 18 years old.

Dr. Brooks concluded that claimant's intellectual functioning appeared to have deteriorated since she left school. For her opinion here, she cited information IRC obtained regarding claimant's social functioning in 2012, when she applied for regional center services at that time. As summarized in the 2012 Social Assessment, claimant graduated from high school in 1992 with a diploma where she was in regular education classes and did not receive special education services. She attended the Maxine Waters Employment Center for approximately one year and learned office skills including typing. She went to work for the LAUSD on December 6, 1993, and worked there for 15 years. She worked at LAUSD four to five days a week. At LAUSD she was employed at various high schools doing office work where she entered student contact information, helped people at the counter and answered phones. In 2010 she was laid off and received unemployment benefits for 18 months and has not worked since she was laid off.

Claimant's aunt asked Dr. Brooks whether she changed her opinion if claimant worked only part-time at LAUSD or was fired several times for job performance issues. Dr. Brooks stated that this information did not change her opinion.

Dr. Brooks's testimony was fully credible. She based her opinion on information in the evidence of record, applicable criteria under the DSM-5, and the laws and regulations governing the Lanterman Act as detailed later in this decision. To the extent Dr. Tamanaha's opinion differs from Dr. Brook's opinion, it is discounted.

## CLAIMANT'S AUNT'S TESTIMONY

6. Claimant's aunt testified that she believes that claimant, like her brother who has been a regional center client, has autism. Claimant, she suggested, was not assessed for autism because claimant's mother did not enroll her in special education classes because she did not want the assistance. She also disagreed with some of the information contained in the 2012 Social Assessment, although it is noted she provided this information to IRC. She said claimant had difficulty completing high school, failed classes and had to take summer classes in order to graduate with a diploma. She said that claimant was fired several times at LAUSD because she was unable to do the work she was given. She said she only worked part-time at LAUSD.

Due to the time that has passed, claimant's aunt has had difficulty obtaining claimant's school records and medical records before she turned 18 and is presently trying to get these records.

## 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 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.

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 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.

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5. 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.

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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.



(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. Claimant had the burden to establish by a preponderance of the evidence that she is eligible for regional center services because she had a qualifying condition or conditions that originated before she turned 18 years of age that present a substantial handicap. The evidence did not establish that claimant has any such qualifying condition

that originated before she turned 18. The evidence showed that claimant suffers from schizophrenia that has caused a decline in her intellectual capacity since she graduated from high school, and the symptoms of schizophrenia can be similar to the symptoms of ASD. No evidence was presented that claimant had features distinctive to ASD, consistent with the criteria under the DSM-5, before she turned 18 years old.

## ORDER

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

DATED: October 2, 2017

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ABRAHAM M. LEVY

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.**