

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017080816

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 13, 2017.

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

There was no appearance on behalf of claimant.

The matter was submitted on November 13, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On August 7, 2017, IRC notified claimant, an eight-year-old boy, that he 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 August 10, 2017, claimant's mother filed a Fair Hearing Request contending claimant should be provided regional center services because he has a diagnosis of autism.

3. On August 30, 2017, claimant's parents and IRC representatives attended an informal meeting. Claimant's parents outlined the reasons they believed claimant qualified for regional center services. IRC reviewed the records and discussed the content of the records with claimant's parents. The parents told IRC that claimant did well up until the first grade and then had to be hospitalized due to "severe meltdowns." He completed a 30-day behavioral health inpatient program in January 2017. Following the meeting, IRC adhered to its original determination that claimant was not eligible for regional center services and attributed claimant's meltdowns and tantrums to his mental health problems.

4. The hearing was set for September 26, 2017. On September 19, 2017, OAH received a request from claimant's mother to continue the hearing because she had a new job and was not available for the hearing. Claimant's mother was accommodated, and the hearing was rescheduled for November 13, 2017. OAH sent an order notifying claimant's mother and IRC of the new hearing date.

5. On November 6, 2017, IRC sent claimant's mother a letter containing IRC's exhibits and proposed witness list. The letter also reminded claimant's mother of the hearing date. IRC provided proof of service, showing that the letter was delivered to claimant's mother via certified mail.

6. On November 13, 2017, at 1:00 p.m., claimant did not appear. Claimant's mother did not contact OAH regarding a continuance, or provide any reason for her

non-appearance. IRC elected to proceed with a default prove-up hearing. The hearing commenced at 1:30 p.m.

#### DIAGNOSTIC CRITERIA FOR AUTISM

7. The (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 AT HEARING

8. Michelle Lindholm, Ph.D., has been a staff psychologist at IRC since 2011, and served as a psychological assistant at IRC for eight years prior to becoming a staff psychologist. She has a Doctorate in Psychology, is a Board Certified Behavior Analyst, and has a Master of Arts and Bachelor of Arts in Psychology. Dr. Lindholm has extensive clinical experience in the assessment and diagnosis of individuals suspected of having a developmental disability that would qualify them for regional center services. Dr. Lindholm has attended countless educational conferences and trainings in her field and has achieved honors in the same. Dr. Lindholm qualifies as an expert in the diagnosis and treatment of persons with developmental disabilities.

9. Dr. Lindholm testified at the hearing. Her testimony, and claimant's records, are summarized below.

The records submitted by claimant included: a Special Education Referral dated March 7, 2017; a Speech and Language Evaluation dated April 11, 2017; an Individualized Education Plan (IEP) dated April 11, 2017; and a Psychoeducational Evaluation dated April 7, 2017. There are no records that contained a diagnosis of autism during claimant's early developmental period, and no records showing symptoms of autism prior to 2017.

According to Dr. Lindholm, autism is a developmental disability characterized by significant impairments in social communications, repetitive stereotype behaviors, and sensory issues that originated during the developmental period. Based on her review of claimant's records, she did not believe that claimant suffered from autism because there was no evidence he had any symptoms during his early developmental period. Autism does not simply start when a child is older; there will be symptoms during the developmental period. Given the records she reviewed, it appeared claimant's symptoms – which started suddenly in 2017 when he was seven years old – are more likely due to a mental health problem.

Claimant's records show he has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Brief Psychotic Disorder. Neither of those afflictions qualify a person for regional center services.

Claimant began receiving special education services under the diagnosis of "other health impairment" after his acute psychotic break, which led to a 30-day hospitalization, in early 2017. Notably, claimant's IEP stated:

[Claimant] is friendly and gets along with his classmates. He follows classroom and school rules with minimal prompts from his teacher. [Claimant] expresses a genuine desire to please. He is working above grade level in math, reading, and written expression. [Claimant] is very artistic and loves to

draw or work with manipulatives. [Claimant] loves to help in the classroom and will often volunteer for classroom jobs. He expresses ideas and thoughts in complete sentences.”

Dr. Lindholm stated that a person with autism would not exhibit the type of behavior documented in his claimant’s IEP.

Dr. Lindholm also reviewed the March 2017 speech and language assessment and found no signs of autism. Specifically she stated that all test areas showed claimant performed in the average, above average, or superior range. A person with autism would have significant difficulties in expressive and pragmatic language. The assessment shows that claimant clearly does not have such challenges.

Most telling is claimant’s April 2017 psychoeducational evaluation, which is more indicative of mental health problems rather than autism. Claimant’s evaluation showed he spoke his first words at 18 months old; this is normal for a child of that age and did not show a delay, which would be expected in a child with autism. The evaluation also shows claimant’s attention and eye contact were good and that he did not exhibit any repetitive or restricted behaviors, which are the hallmark features of autism. The evaluation noted that prior to claimant’s 2017 hospitalization due to a psychotic break, “there were no academic, social, or behavioral concerns. [Claimant] was a pleasant and positively contributing member of the classroom.” The following paragraph contained in the report explains what occurred that led to claimant’s behavioral health hospitalization:

[Claimant’s] teacher reports that prior to his hospitalization, there were no academic, social, or behavioral concerns. On 1/27/17, [Claimant] was transported to Caramont Regional. [Claimant] attended school on a regular schedule from

1/30/17 to 2/2/17. From 2/2/17 to 2/5/17, [Claimant] received care at Caramont regional. He received one hour of educational services per day. [Claimant] was absent from school on 2/6/17. On 2/7/17, [Claimant] attended school on a half-day schedule per his mother's request. On 2/8/17, [Claimant] reported to his teacher that he saw ants following him. That evening, paramedics were called to the home due to behavior. On 2/9/17, [Claimant] attended therapy at Support, Inc. While at the appointment, [Claimant's] behavior became erratic. He was transported by ambulance to Levine's Children's Hospital in Charlotte, NC. [Claimant] received inpatient services [thereafter]. Dr. Walter Schmalistieg indicated a diagnosis of Brief Psychotic Disorder, Autism Spectrum Disorder, and Attention Deficit Hyperactivity Disorder. While inpatient, [claimant] reported hallucinations intermittently, but displayed no aggressive behaviors. . . .

The above-referenced paragraph is indicative of mental health problems, not autism. Dr. Lindholm reviewed the autism diagnosis, which was given following administration of the Autism Diagnostic Observation Schedule, Module 3 (ADOS). On the ADOS, a score of 7 or above indicates possible autism. Claimant scored a 9. However, Dr. Lindholm said that she attributed claimant's elevated score on the ADOS to his mental health problems; in other words, the ADHD and mental health problems can affect a person's ability to test, which can skew the scores, and lead to invalid results. Dr. Lindholm said that despite the score on the ADOS, nothing in the evaluation was consistent with autism.

Accordingly, Dr. Lindholm concluded claimant did not meet the criteria for regional center services based on a diagnosis of autism.

10. No evidence was presented on behalf of claimant.

## 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;

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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.



(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."

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 his eligibility for regional center services. None of the documents introduced in this hearing established that claimant had autism and no evidence contradicted Dr. Lindholm's credible expert opinion that claimant was ineligible for IRC services.

Despite the diagnosis of autism contained in the April 2017 psychoeducational evaluation, claimant's records are replete with evidence that point to mental health/psychiatric problems as opposed to autism. Claimant does not have any of the characteristic features of autism as listed in the DSM-5 and his presentation of the psychotic episode in early 2017 is inconsistent with autism. There was no evidence claimant had any cognitive or adaptive challenges during his developmental years, which would have manifested if he had autism. Even at present, claimant is functioning

in the average, above average, and superior ranges. Claimant's behaviors as reported by his teacher are inconsistent with autism. Further, during claimant's hospitalization following his psychotic episode, claimant suffered from hallucinations and further erratic behavior, which is more indicative of a person with mental health/psychiatric challenges than a developmental disorder. Indeed, the only evidence that showed claimant has autism was claimant's score on the ADOS – which was most likely affected by the mental health/psychiatric challenges and claimant's ADHD. In other words, based on the totality of the records provided, claimant does not meet the diagnostic criteria for autism and is not eligible for regional center services.

## 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: November 22, 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.**