

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017090758

DECISION

Administrative Law Judge (ALJ) Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on December 5, 2017.

Claimant was represented by his mother. Claimant was present for part of the hearing.

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

ISSUE

Is claimant eligible for regional center services due to Autism Spectrum Disorder?

FACTUAL FINDINGS

1. On August 8, 2017, Sandra Brooks, Ph.D., a licensed clinical psychologist, conducted a Psychological Assessment of claimant, who is 18 years old. The Psychological Assessment was performed to "assist multidisciplinary team in determining eligibility for Regional Center services." (Exh. 14) Dr. Brooks assessed

claimant by reviewing past medical/psychological records concerning claimant. Additionally, Dr. Brooks assessed claimant using the Childhood Autism Rating Scale, Second Edition, High-Functioning Version (CARS2-ST); the Autism Diagnostic Observation Schedule, Second Edition – Module 4; personal observation of claimant; and a parent interview. Based on the assessment Dr. Brooks found and concluded that:

. . . The results of the Childhood Autism Rating Scale, 2<sup>nd</sup> Edition were consistent with mild-to-moderate symptoms of autism spectrum disorder. However, the developmental history obtained by interviewing [claimant's] mother does not appear to be consistent with autism spectrum disorder. Per his mother's report, [claimant] did not demonstrate restricted interests, repetitive or stereotyped behaviors during early childhood. It appears that many of [claimant's] symptoms (e.g. his tics) coincided with the onset of his mental health issues. [Claimant] admittedly presents with a complex diagnostic picture. He has existing diagnoses of major depression; recurrent and ADHD, combined type; tic disorder and specific learning disability. However, [claimant] does not meet the criteria for autism spectrum disorder. . . .

#### **RECOMMENDATIONS:**

1. Ineligible for Regional Center services under the criteria of intellectual disability, a similar condition to intellectual disability and/or that requires similar treatment, or autism as defined in Welfare and Institutions Code,

Section 4512, and Title 17, California Code of Regulations, Section 54000.

2. Continued psychiatric/psychological interventions to address [claimant's] mental health needs. (Exh. 14)

#### CLAIMANT'S POSITION

2. Claimant's mother presented Kaiser Permanente medical records describing claimant's birth complications and condition; physical therapy and occupational therapy records; 2003-2004 School records including, a San Bernardino City Unified School District Multidisciplinary Assessment Report, speech and language assessments, Individualized Education Program analyses and recommendations; a 2017 Easterseals of Southern California "Initial ABA Assessment and Recommendation Report"; 2017 Kaiser Foundation Health Plan, Inc. "Member Notice of Authorization of Services"; "Past visit information details – Kaiser Permanente"; and a genetic report indicating claimant has "47 XYY syndrome."

3. The documents provided by complainant and the other documents reviewed by Dr. Brooks mentioned the following "health problems": Hypermobility Syndrome (loose joints); mood disorder; TIC disorder; sleep disorder; celiac disease; ADHD, combined presentation; anxiety; Karyotype 47, XYY; and, Autism Spectrum Disorder (ASD).

#### TESTIMONY OF DR. BROOKS

4. Dr. Brooks testified during the instant hearing. Dr. Brooks was asked questions concerning her evaluation/assessment of claimant and the fact that some of the records Dr. Brooks had reviewed during her evaluation, as well as the documents provided by claimant as part of his hearing evidence, listed ASD as a possible diagnosis.

Dr. Books testified that claimant had brain damage at birth, and numerous intellectual and emotional problems, many of which could result in ASD type symptoms. Claimant was a "complex case"; however, none of the documents contained an evaluation focused exclusively on assessing claimant for ASD. Dr. Brooks, on the other hand, focused on ASD during her assessment. Dr. Brooks assessed claimant by reviewing documents describing his developmental and social progress; she administered the CARS2-ST; she observed claimant and interviewed claimant's mother. The CARS2-ST did indicate that claimant exhibited "Mild-to Moderate Symptoms of Autism Spectrum Disorder"; however, Dr. Brooks testified that certain of claimant's diagnoses could result in ASD-type symptoms. For example, the documents provided by claimant indicated that his most recent diagnosis of 47 XYY syndrome could result in such symptoms as "learning disabilities and behavioral problems such as impulsivity." (Exh E)

5. After reviewing the documents presented by claimant before and during the hearing, Dr. Brooks testified that although some of claimant's diagnoses could result in ASD-type behaviors, the existence of those behaviors that did not mean that ASD was an appropriate diagnosis for claimant's presentation. Dr. Brooks opined that claimant "did not meet the criteria for Autism Spectrum Disorder."

## ANALYSIS

6. No competent medical/psychological evidence was presented to refute Dr. Brooks's expert opinion that claimant did not qualify for Regional Center Services based on ASD or any other statutorily required qualifying condition.

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to

meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual . . . [T]his 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.

3. California Code of Regulations, title 17, section 5400.1, defines “substantial disability” as follows:

(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

4. The evidence presented established that claimant does not have Autism Spectrum Disorder or any other qualifying developmental disability. Accordingly, at this time IRC is statutorily precluded from providing services for claimant.

#### ORDER

Claimant's appeal is denied. IRC's finding that claimant does not qualify for Regional Center services is affirmed.

Dated: December 18, 2017

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ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

#### NOTICE

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**