

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017100503

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 29, 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 29, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of Autism Spectrum Disorder (autism), intellectual disability, or a disabling condition closely related to an intellectual disability (Fifth Category)?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On August 23, 2017, IRC notified claimant, a 27-year-old-man, that he was not eligible for regional center services because the records he 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 needs as an individual with an intellectual disability.

2. On September 26, 2017, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination. The request was vague and read: "because my son have need that hasn't been address – please reconsider – reprocess/evaluating my son."

3. Neither claimant's mother nor claimant attended the informal meeting set after the filing of the fair hearing request; according to Ms. Zermeño, claimant's mother said she just wanted to proceed with a "state hearing."

4. A Notice of Hearing was sent to claimant's address of record, which was provided on the Fair Hearing Request. Service of the Notice of Hearing was proper. Prior to the hearing, IRC also sent its exhibits to claimant, and provided a certified mail printout showing it was received. The exhibits contained a cover letter reminding claimant of the date and time of the hearing.

5. Neither claimant nor his authorized representative appeared at the hearing. IRC requested a hearing on the merits.

### DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY AND THE "FIFTH CATEGORY"

6. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains the diagnostic criteria used for intellectual disability.

Three diagnostic criteria must be met: Deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

7. Under the "fifth category" the Lanterman Act provides assistance to individuals with disabling condition closely related to an intellectual disability that requires similar treatment needs as an individual with an intellectual disability, but does not include other handicapping conditions that are "solely physical in nature." A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

#### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

8. The DSM-5 also 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 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 the eligibility criterion of autism.

#### EVIDENCE PRESENTED AT THE HEARING

9. No evidence was presented on behalf of claimant.
10. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor,

Senior Consumer Services Coordinator, and Psychological Assistant. She has been involved in assessing individuals who desire to obtain IRC services for over 26 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism, intellectual disability, the fifth category, and in the assessment of individuals for regional center services.

11. Dr. Stacy reviewed documents provided by claimant, which included school evaluations and claimant's individualized education plans (IEPs). Dr. Stacy also conducted a psychological assessment of claimant. Her testimony and the records are summarized as follows:

Claimant received special education services during his high school years. He first received special education services beginning in kindergarten, under the category of speech and language impairment. He was served under the categories of "other health impairment" and autism in later years. Claimant has also been diagnosed and/or treated in the past for attention deficit hyperactivity disorder (ADHD), depression, and anxiety. Claimant has received counseling for mental health problems. Dr. Stacy explained that a person may qualify for special education services under an "autism" diagnosis with merely "autistic like" symptoms, whereas to obtain regional center services, a person must have a diagnosis of autism using the DSM-5 criteria, which requires a substantial disability in three or more major life activities. Claimant provided no records showing that he ever obtained a diagnosis of autism based on DSM-5 criteria.

Dr. Stacy conducted an assessment of claimant on July 17, 2017. Dr. Stacy administered the Autism Diagnostic Observation Scale (ADOS). Claimant's results on the ADOS showed he was below the cutoff score for autism. Similarly, the test results that assessed claimant's intellectual and cognitive functioning showed he did not meet the

DSM-5 criteria for intellectual disability or the fifth category as his intellectual functioning was above the score for what would be considered an intellectual disability. Claimant's school records also showed that he was in the borderline or low average area of intellectual functioning.

Notably, claimant did not exhibit any of the characteristic features of autism, or otherwise appear to be deficient in communicating his feelings. He exhibited no repetitive or restricted behaviors, and spontaneously communicated his thoughts, feelings, and emotions. Although claimant's mother's reporting on the Vineland Adaptive Behavior Scales showed claimant had low adaptive skills, those scores were inconsistent with claimant's achievement in the other areas of testing and inconsistent with what Dr. Stacy observed during the testing. Dr. Stacy concluded the Vineland II scores were therefore not indicative of claimant's adaptive skills, as they were most likely underestimated. Accordingly, because claimant did not have deficits in intellectual functioning concurrent with deficits in adaptive functioning, he did not meet the criteria for intellectual disability or the fifth category.

Based on the records provided as well as her assessment, Dr. Stacy concluded claimant did not qualify for regional center services.

## 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, 500.)

### 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 "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.

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.

(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

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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.

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 qualify for regional center services. The burden was on

claimant to establish his eligibility for regional center services. Claimant introduced no evidence demonstrating that he is eligible to receive regional center services, and Dr. Stacy's credible expert testimony that claimant did meet the DSM-5 diagnostic criteria for autism, intellectual disability, or a condition closely related to an intellectual disability, was un rebutted. Claimant did not meet his burden and his appeal is denied.

## 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: December 6, 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.**