

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018070549

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on August 21, 2018.

Claimant's mother represented claimant, who was present.

Stephanie Zermeño, Customer Services Representative, represented Inland Regional Center (IRC).

The matter was submitted on August 21, 2018.

ISSUES

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of a diagnosis of autism that constitutes a substantial disability?

Should IRC perform an intake and/or testing of claimant pursuant to Welfare and Institutions Code section 4643, subdivision (a)?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On June 25, 2018, IRC notified claimant that it determined that she was not eligible for regional center services. IRC did not perform an intake assessment under Welfare and Institutions Code section 4643, subdivision (a), because the records did not show that claimant has a qualifying condition for services.

2. On June 29, 2018, claimant's mother filed a fair hearing request, appealing IRC's decision. In her hearing request, she asked IRC to perform an intake assessment of claimant to assess her eligibility for services.

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (*DSM-5*), identified criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria include 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.

### BACKGROUND, EDUCATION AND ACCOMMODATIONS PROVIDED FOR HER EDUCATION

4. Claimant is 22 years old and attends community college where she plans to obtain an associate's degree in early childhood education. She did not receive special education services during high school but was under a Section 504 accommodation due

to Attention Deficit Disorder and Autism, as documented in a form completed by her doctor, Belen C. Leong, M.D. Under this accommodation, she was given extra time for test taking and completing assignments. She graduated from high school and at the community college she attends, she operates under a plan for students with disabilities that allows her to have extended time for assignments, utilize a tape recorder, and have a tutor. In the verification for her disability for this accommodation, claimant's doctor, Roderick Stuart, M.D., described her disability as ADD/ADHD and Autism/Asperger's.

Claimant's doctors completed the Section 504 and Disability Verification forms for her to receive these accommodations. The IRC Multi-Disciplinary Team on June 21, 2018, found that the diagnoses contained in these forms were not supported by clinical documentation. The evidence presented at the hearing confirmed the Multi-Disciplinary Team's conclusion in this regard was correct.

#### EVIDENCE PRESENTED BY IRC

5. Sandra Brooks, Ph.D., testified on behalf of IRC. Dr. Brooks is a licensed clinical psychologist and regularly performs assessments to determine whether a claimant is eligible for services under the Lanterman Act.

Dr. Brooks reviewed the evidence of record in this matter. This evidence consisted of a letter signed by Dr. Leong, M.D., dated March 12, 2008, a letter signed by Dr. Stuart, dated March 1, 2016, and a psychiatric progress note from a telephone visit Dr. Stuart completed on December 23, 2016. In addition, Dr. Brooks reviewed a record and report dated February 2, 2016, completed by Dr. Stuart, which claimant submitted at the hearing.

After reviewing these materials, Dr. Brooks found that there was insufficient evidence to conclude that claimant has Autism Spectrum Disorder (ASD) or to warrant an intake evaluation. She gave the following reasons for her conclusion: In a December 23, 2016, progress note, Dr. Stuart stated that claimant had "significant social phobia." In

his letter dated March 12, 2008, Dr. Leong diagnosed claimant with Attention Deficit without Hyperactivity as a basis for a Section 504 accommodation. Dr. Brooks testified that a social phobia diagnosis is inconsistent with an Autism Spectrum Disorder diagnosis because persons with ASD typically do not present with a level of concern regarding how they present and, also, social anxiety is not uncommon for persons with ADHD.

Also, Dr. Brooks stated that information in Dr. Stuart's February 2, 2016, report was inconsistent with an ASD diagnosis, and this information did not warrant an intake evaluation. Dr. Brooks found it significant that, according to the mental status exam Dr. Stuart performed on claimant, Dr. Stuart reported claimant to have "average" "abstraction," meaning the ability to understand abstract concepts. Dr. Brooks said that this was inconsistent with an ASD diagnosis and consistent with her observation of claimant at the hearing where she displayed a sense of humor, and responded to what she heard with a social smile, meaning that she appeared able to pick up social cues.<sup>1</sup> Dr. Brooks noted that Dr. Stuart also reported claimant to have "average" insight, which was also inconsistent with an ASD diagnosis. Dr. Brooks further noted that claimant's speech was reported as "normal, which again was inconsistent with an ASD diagnosis.

As an additional reason in support her opinion, Dr. Brooks stated there were no reports that claimant had repetitive body and stereotypical behaviors, according to the records she reviewed.

Dr. Brooks acknowledged that Dr. Stuart's February 2, 2016, report included information that brought a possible ASD diagnosis "closer." In the report Dr. Stuart

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<sup>1</sup> Because Dr. Brooks was not an evaluating psychologist of claimant, her observations of claimant during the hearing are considered only to supplement and explain Dr. Stuart's mental status exam of claimant and his findings.

described claimant as having a hard time picking up social cues and a very restricted range of interests. But, considering the record as a whole, and for the reasons Dr. Brooks stated, this information did not change her opinion that the evidence was insufficient to conclude that claimant has ASD or that an intake evaluation was warranted.

6. Dr. Brooks's testimony was credible and consistent with the evidence in the record.

#### CLAIMANT'S PARENT'S TESTIMONY AND ARGUMENT

7. Claimant's parents and claimant testified. Claimant's mother described claimant as "high functioning." But, she is concerned about claimant's lack of social connections and her ability to prepare for life. Her parents noted that they need to provide her a general structure through lists they create that she can follow so that she can take care of her personal care. They stated that she does not pay attention to her personal hygiene, she has to be reminded to perform tasks of personal hygiene, she is not interested in making social connections and when she is not in college she spends time in her room. Claimant testified that she is taking courses in early childhood development, she hopes to obtain her associate's degree and she would like to continue her education after she graduates from community college. Claimant stated that she takes the bus to and from school.

Claimant's mother faulted claimant's health plan for the lack of documentation to support a diagnosis of ASD for claimant. Nonetheless, she argued that claimant meets the criteria under the *DSM-5* for ASD.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

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### STATUTORY AUTHORITY

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

4. Welfare and Institutions Code section 4501 states:

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. . . .

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

“Developmental disability” means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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.

6. California Code of Regulations, title 17, section 54000,<sup>2</sup> provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, 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

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<sup>2</sup> The regulation still uses the former term "mental retardation" instead of "intellectual disability."



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.

7. 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.

8. Welfare and Institutions Code section 4642, subdivision (a), requires a regional center to perform initial intake and assessment services for "any person believed to have a developmental disability." Intake includes a decision whether to provide an assessment. (Welf. & Inst. Code, § 4642, subd. (a)(2).) Welfare and Institutions Code section 4643, subdivision (a), provides the following regarding assessment services:

(a) If assessment is needed, the assessment shall be performed within 120 days following initial intake.

Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment.

Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b).

## REGULATION GOVERNING ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

9. 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. The fact that a school may be providing services to a student under an autism disability is not sufficient to establish eligibility for regional center services, as regional centers are governed by California Code of Regulations, title 17. Title 17 eligibility requirements for services are different than those of title 5.

## EVALUATION

10. Claimant's appeal of IRC's decision to deny claimant regional center services is denied. A preponderance of the evidence does not show that claimant meets the *DSM-5* criteria for ASD. Dr. Brooks testified credibly that there is insufficient evidence to conclude that claimant has ASD. The fact that claimant had 504 accommodations in high school and has a disability accommodation plan for the community college she attends is insufficient to find that she has a *DSM-5* diagnosis of ASD that would make her eligible for regional center services.

Claimant's request that IRC conduct an intake assessment of claimant is also denied for the same reasons Dr. Brooks gave for her opinion that there is insufficient evidence to conclude that claimant has ASD.

## ORDER

Claimant's appeal from Inland Regional Center's determination that she is not eligible for regional center services and supports is denied. Claimant's request for an intake assessment under Welfare and Institutions Code section 4643, subdivision (a), is also denied.

DATED: August 30, 2018

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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.**