

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. 2019011162

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 9, 2019.

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

Although properly noticed, claimant did not appear. IRC elected to proceed with the hearing and presented evidence.

The matter was submitted on April 9, 2019.

ISSUE

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

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On December 4, 2018, IRC sent claimant a Notice of Proposed Action, which stated that IRC had determined claimant was not eligible for regional center services.

2. On December 22, 2019, claimant's mother, who claimant authorized to serve as his representative, filed a fair hearing request, appealing IRC's decision. The request provided the following reason for seeking a fair hearing:

I would like to provide more information from Dept of  
Riverside.<sup>1</sup>

3. The hearing was initially set for March 18, 2019. The hearing was continued to April 9, 2019, to provide claimant additional time to provide supporting documentation. The Order Granting Continuance and Notice of Hearing, setting the date, time, and place of this hearing, was properly served on claimant's representative by United States mail and electronic mail on February 7, 2019.

### DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

4. Official notice was taken of excerpts from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which Holly A. Miller, Psy.D., IRC's expert, referenced during her testimony.<sup>2</sup> As Dr.

---

<sup>1</sup> Based on other information in the record, it appeared that claimant's mother may have meant "Department of Rehabilitation."

<sup>2</sup> Dr. Miller's hearing testimony is discussed in more detail below.

Miller explained, the *DSM-5* provides the diagnostic criteria used by psychologists to diagnose Autism Spectrum Disorder, which is one of the qualifying conditions under the Lanterman Act for which an individual may receive regional center services. To be eligible for regional center services based on Autism Spectrum Disorder, a claimant must meet the diagnostic criteria set forth in the *DSM-5* for that disorder.

5. Under the *DSM-5*, the criteria necessary to support a diagnosis of Autism Spectrum Disorder 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 current functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

## BACKGROUND

6. Claimant is a 21-year-old man. Claimant did not speak when he was little. He received special education services in either elementary or middle school, was removed from the special education program for a period of time, and he was then placed back in special education until he graduated from high school. Claimant has been diagnosed with Obsessive Compulsive Disorder (OCD), Social Phobia Unspecified and Social Anxiety Disorder,<sup>3</sup> and Attention Deficit Hyperactivity Disorder (ADHD). Claimant sought services from the Department of Rehabilitation to help him find employment, and the Department of Rehabilitation referred him to IRC.

---

<sup>3</sup> Dr. Miller explained that Social Phobia Disorder is now referred to as Social Anxiety Disorder in the *DSM-5*.

## CLAIMANT'S RECEIPT OF SPECIAL EDUCATION SERVICES

7. According to Individualized Education Program (IEP) documentation generated when claimant was in high school,<sup>4</sup> he was determined to be eligible for special education services based on Other Health Impairment (OHI) and Specific Learning Disability (SLD). None of the IEP records submitted mentioned any concerns that claimant may have exhibited symptoms of Autism Spectrum Disorder.

IEP documentation dated December 6, 2013, when claimant was in the 10th grade, noted that claimant exhibited the following strengths: "[Claimant] is polite and respectful-gives a good effort," "[c]omes to class on time and prepared daily," and "[n]o reported behavior issues with either teachers or fellow students." His language, communication, and speech were described as follows: "[Claimant] is very shy and likes to keep to himself - he will talk when prompted by teacher or case carrier but he keeps his answers to questions very short," "[h]e does not ask many questions or seem to have a lot of interaction with his classmates," and "[n]o speech issues hve [sic] been mentioned by any teacher or adult in any of [claimant's] classes." Claimant's social behavior was described as: "[Claimant] has good behavior while in class - cooperative and respectful of his teachers," "[g]ives a good effort at least 85% of the time - teachers report it would be nice if he asked more questions or demonstrated when he needs help - hard to tell when he doesn't understand something because he rarely asks for help or asks questions - very shy," and "[s]eems to be well liked by his peers - no reported behavior issues in any class the last 2 school years." The December 6, 2013, IEP also

---

<sup>4</sup> Although other records referenced his receipt of special education services before high school, the only IEP records submitted at this hearing pertained to when he was in high school.

noted that claimant had been diagnosed with Social Anxiety Disorder and had taken medication in the past for that disorder.

Claimant's December 2014 IEP documentation, when he was in 11th grade, and his November 2015 IEP documentation, when he was in 12th grade, continued to state he was eligible for special education services based on OHI and SLD. Similar to the 2013 IEP, the 2014 IEP described claimant as a shy, quiet, well-behaved boy, who did not speak unless prompted and did not interact much with his classmates. The 2014 and 2015 IEPs both noted that claimant was "able to get himself up and ready for school each day" and "take care of his own personal needs." The 2014 IEP stated that claimant's "areas of necessity" to receive educational benefits were:

[Claimant] needs to have directions repeated and reinforced,  
may need seat changed depending on location in class,  
frequent checks to make sure he is on task and understands  
what he is supposed to be doing, visual examples helpful as  
available, can take tests in resource class if more  
comfortable, may need extra time on large assignments with  
lots of reading and writing (must discuss with his teachers)  
use of calculator/dictionary for tests

The 2015 IEP stated claimant had "a documented anxiety and attention deficit issue that impact his ability to learn at the same rate as his peers and necessitates continued monitoring. ..." Similar to the earlier IEPs, according to the 2015 IEP, claimant was very quiet and rarely spoke, he could "communicate his needs, wants and emotions in a reasonable fashion if pushed but generally does not say much"; "he rarely will orally respond to questions and make eye contact while communicating with adults and peers"; when he spoke, his speech volume was low but understandable; and he would

"not initiate conversations and ask questions." Claimant could follow classroom rules and procedures, accept corrections, and respond positively to events in the classroom.

#### EVALUATIONS/ASSESSMENTS AND MEDICAL RECORD NOTATIONS

December 9, 2010, Psycho-Educational Evaluation

8. In 2010, when claimant was 12 years and 8 months old and in 7th grade, a psycho-educational evaluation was performed by his school district's school psychologist. The purpose of the evaluation was to determine claimant's cognitive abilities, strengths and weaknesses in processing information, levels of academic performance, and social-emotional strengths and needs. He was then a general education student. The following tools were administered to conduct the evaluation: The Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), Global Ability Index (GAI), Test of Auditory Processing Skills (TAPS-3), Berry-Buktenica Developmental Test of Visual Motor Integration, Test of Visual Perceptual Skills (TVPS-3), and Behavior Assessment for Children 2nd Edition (BASC-2).

The "Summary" portion of the report stated (emphasis in original):

[Claimant] was assessed in all areas of suspected disability. Assessment results reveal that [claimant] appears to be functioning intellectually within the average range (FSIQ SS 91). His overall auditory processing skills (SS 90) are in the average range. However, his auditory memory skills are in the low average range (SS 85) and appear to be an area of weakness. His sensory motor skills (SS 77) are in the below average range when compared to other students his age. [Claimant's] overall visual perceptual skills (SS 102) are in the average range and appear to be an area of strength.

[Claimant's] academic skills are in the low average to average range, with exception to the Essay Composition (SS 74) and Oral Expression (SS 76) subtests, which both fall in the below average range.

[¶] ... [¶]

A social emotional analysis across environments indicate clinical and at-risk areas of concern in the areas of Withdrawal, Attention, Functional Communication, Social Skills, Learning Problems, Locus of Control, and Leadership. This is clearly a manifestation of his medically diagnosed Social Anxiety Disorder. Moreover, the Social Anxiety Disorder seems to be limiting his vitality and alertness which is resulting in adverse academic performance. The IEP Team should further consider the Social Anxiety Disorder being the function of his masked Specific Learning Disability. The IEP Team will decide if [claimant] qualifies for special education services under the primary disability category of Other Health Impairment due to his medical diagnosis of Social Anxiety Disorder.

The Psycho-Educational Evaluation did not mention Autism Spectrum Disorder or mention any concern that claimant exhibited any behaviors or characteristics that might indicate the existence of autism.

## February 2, 2011, Occupational Therapy Assessment

9. On January 31, 2011, when claimant was 12 years, 10 months old and in 7th grade, an occupational therapy assessment was conducted by an occupational therapist at claimant's school district to evaluate his fine motor and visual motor skills. The February 2, 2011, report of that assessment stated that claimant qualified for special education "under the primary disability of other health impairment and secondary disability of speech and language disability."<sup>5</sup> The report also noted he had been diagnosed with "anxiety, OCD, and ADHD." Under the "Environmental/Behavioral Observation," the report stated:

[Claimant] was assessed in a private conference room with adequate seating, lighting, and space. There was [sic] little to no noise distractions during testing. [Claimant] transitioned well with this therapist. He initially appeared very shy and would respond to therapist with very little speech but after ~5 minutes became more social with this therapist; however, [claimant] would have to be prompted to initiate conversation. He was very cooperative throughout testing and appeared to try his best during all tests. He was able to sit still throughout the entire assessment (~45) with no noticeable need for movement/sensory breaks.

---

<sup>5</sup> There were no IEP records submitted for the timeframe when claimant was in 7th grade. This was the only reference in the record to the basis upon which he received special education services before he was in high school.



Occupational therapy was not recommended based on the January 31, 2011, assessment.

#### OPMG, Corona Records

10. On September 6, 2011, when claimant was 13 years old, he saw Sai Chundu, M.D., at OPMG, Corona.<sup>6</sup> The records for that visit listed the following conditions under the "Assessment" heading: "Obsessive-Compulsive Disorder" and "Social Phobia (Social Anxiety Disorder)." There was no mention of Autism Spectrum Disorder.

Claimant went to OPMG, Corona to obtain treatment for OCD and Social Phobia (Social Anxiety) Disorder when he was 17 and 18 years old. The records consistently noted that claimant appeared "anxious" at those appointments. The notes for the March 23, 2015, visit, when claimant was 17 years old, stated claimant's father reported that claimant had "social anxiety does not have any friends also washes his hands a lot does not touch any food will use a fork for every food including bread."

The exam notes for an appointment on July 28, 2015, when claimant was 17 years old, stated: "He has appropriate behavior. He avoids eye contact and fidgeting. He appears anxious. Shy. His speech is flat, monotonous and slowed. Thought and perception are intact and appropriate."

The exam notes for an October 18, 2016, therapy appointment, when claimant was 18 years old, stated:

---

<sup>6</sup> Although the records were unclear, it appeared that "OPMG, Corona" referred to "Orange Psychiatric Medical Group, Inc." in Corona, California.

He has appropriate behavior. He avoids eye contact and in distress. He appears depressed and tearful. His speech is flat, incoherent and slowed. Thought and perception are intact and appropriate. ... Pt. non communicative, isolated, not in school, not working, no friends. Pt almost mute in session but looking panicky in [sic] is quiet tears [sic] with one or two word responses. ... Pt not behavior problem but overwhelmed socially not going out at all unless pushed. ... Pt presents behavior consistent along [sic] autistic aspergers [sic] syndrome. ...

During a visit on December 10, 2016, when claimant was 18 years old, the doctor noted that claimant's parents were present and that:

Pt still does not associate with anybody now that he has graduated from high school he just sits at home doing nothing does not have any motivation his therapist has told him that he has asperger's [sic] disease and he can not [sic] do anything for him. ... He avoids eye contact. He appears anxious. Speech is coherent and fluent, with appropriate rate and intensity. ...

Kaiser Permanente Records

11. A Kaiser Permanente Visit Summary, dated June 13, 2017, when claimant was 19 years old, listed the following under the "Health Problems Reviewed" heading: "Autism Spectrum Disorder" and "Anxiety." The notes listed recommendations that claimant engage in social skills training, vocational training, behavior modification

training, and continue to take previously prescribed anti-depressant medication. The notes also stated that it was recommended that claimant contact IRC.

Another Kaiser Permanente record "generated" on October 19, 2017, stated that claimant's "Active Problems" included "Anxiety (Noted 3/23/2017)" and "Autism Spectrum Disorder (Noted 3/23/2017)."

There was no information contained in the June 13, 2017, or October 19, 2017, medical records explaining why Autism Spectrum Disorder was noted as one of the health problems then being reviewed.

#### Sara deLeon, Psy.D.'s Psychological Evaluation Report

12. Sara deLeon, Psy.D., conducted an assessment of claimant on November 9, 2018, when he was 20 years and 8 months old, to determine his eligibility for regional center services. Dr. deLeon issued a report explaining her opinions. Dr. deLeon based her opinions on her file review, observations, parental and consumer interviews, and her administration of the Comprehensive Test of Nonverbal Intelligence 2nd Edition (CTONI-2), Childhood Autism Rating Scales 2nd Edition - High Functioning Version (CARS2-HF), and Vineland Adaptive Behavior Scales 3rd Edition (VABS-3).

Under the "Behavioral Observations" section of her report, Dr. deLeon wrote:

[Claimant] presented well-groomed and slightly built. He exhibited anxiety as evidenced by his posture and other verbal and nonverbal cues. He sat folded in on himself and displayed varying levels of discomfort depending upon the level of engagement expected of him. [Claimant] appeared to understand and comprehend what was discussed in the evaluation. He appeared anxious and discomfited.

Nevertheless, [complainant] was able to cooperate with the demands of the assessment.

Based on the CTONI-2, which was administered to estimate his nonverbal functioning, claimant's nonverbal skills fell in the low average to average range. On the CARS2-HF, which was administered to identify whether he exhibited behaviors associated with Autism Spectrum Disorder, claimant was given a score of 26.5 based on Dr. deLeon's observations and his parent's report. That score fell in the "minimal to no" range for symptoms of Autism Spectrum Disorder. The VABS-3 was administered to assess claimant's adaptive functioning, and the results indicated that claimant's overall adaptive functioning was in the moderately low range. His communication skills score was in the adequate range, which Dr. deLeon's report stated would not be suggestive of Autism Spectrum Disorder.

Dr. deLeon wrote in the "Summary" portion of her report that she did not believe claimant met the diagnostic criteria for Autism Spectrum Disorder or Intellectual Disability. She also stated that he did not present with substantial deficits in adaptive functioning. She noted that:

[Claimant] exhibits some mild reactivity to sensory aspects of the environment but not to a substantial degree. When comfortable, he is able to understand language and is capable of using language in a flexible and socially-appropriate manner that is not consistent with ASD. He does not exhibit deficits in understanding language as is typically consistent with ASD. [Claimant] prefers routine and sameness in particular routines which could be related to the previously issued diagnosis of OCD and is not solely

indicative of ASD. [Claimant] has not developed peer relationships as would be expected for his age however his social deficits appear related to anxiety rather than ASD. To best help [claimant], it is strongly recommended that he consider seeking a formal mental health evaluation and treatment to better understand the most appropriate diagnosis for him.

#### DR. HOLLY A. MILLER'S EXPERT OPINION TESTIMONY

13. Holly A. Miller, Psy.D., is a staff psychologist at IRC, where she has worked since 2016. Her duties include conducting psychological assessments and reviewing records to determine regional center eligibility. She received her Bachelor of Arts Degree in Psychology from the University of California-Riverside in 2002; Master of Science Degree in Psychology from University of La Verne in 2006; and Doctor of Psychology Degree from University of La Verne in 2009. She is licensed as a clinical psychologist by the State of California. Before working as a staff psychologist for IRC, Dr. Miller worked as a clinical supervisor for Olive Crest from 2013 to 2016. She has also worked as a part-time clinical psychologist at Foothills Psychological Services since 2013.

Dr. Miller had ever not met claimant, and she did not conduct an assessment of claimant to determine his eligibility for regional center services. She based her opinions on her review of the documentation claimant submitted and on Dr. deLeon's written report.

Dr. Miller agreed with Dr. deLeon's assessment that claimant is not eligible for regional center services. She explained that claimant did not meet the diagnostic criteria for Autism Spectrum Disorder, and he was not ever diagnosed with Autism Spectrum Disorder before he was 18 years old. She noted that the references to autism in the OMPG, Corona records and the Kaiser Permanente records were not supported by any

psychological testing, which would have been necessary to properly diagnosis Autism Spectrum Disorder. Dr. Miller opined that claimant's difficulties are likely the result of his Social Anxiety Disorder and OCD. Dr. Miller also noted that she did not see evidence in the records that claimant was substantially disabled.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine eligibility for regional center services, 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 and 500.)

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.)

### 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>7</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.

---

<sup>7</sup> The regulation still uses the former term "mental retardation" instead of "intellectual disability."



(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.

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. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "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 . . ." (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests ... that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

9. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. However, the criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act and California Code of Regulations, title 17. The fact that a school may be providing, or may have provided,

services to a student based on the school's determination of an autism disability is not sufficient to establish eligibility for regional center services.

#### EVALUATION

10. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet to qualify for regional center services. Claimant suffers from Social Anxiety Disorder and OCD. The evidence introduced in this hearing was not sufficient to prove by a preponderance of the evidence that claimant suffers from Autism Spectrum Disorder. Accordingly, claimant is not eligible to receive regional center services based on the evidence presented at this hearing. Thus, his appeal from IRC's determination that he is ineligible to receive regional center services must be denied at this time.

#### ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services and supports is denied.

DATED: April 22, 2019

---

THERESA M. BREHL

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.**