

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2019060192**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 18, 2019, in San Bernardino, California.

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

Claimant's mother represented claimant, who was present. Claimant's father was also present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on July 18, 2019.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (autism), Intellectual Disability, or Fifth Category?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant, a three-year-old boy, has been receiving regional center services under the Early Start Program since April 2018. Claimant received the Early Start services based upon delays in communication, fine motor skills, and adaptive skills. Claimant has been diagnosed with optic nerve hypoplasia and albinism.

2. On May 13, 2019, IRC sent claimant's mother a Notice of Proposed Action stating that claimant did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by IRC did not show claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.

3. On July 28, 2019, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination. An informal meeting was scheduled, but claimant's mother did not want to attend an informal meeting, rather, she wanted to proceed with the hearing.

## **Diagnostic Criteria for Autism**

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies 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 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 based on autism.

## **Diagnostic Criteria for Intellectual Disability**

5. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (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.

## **Diagnostic Criteria for Fifth Category**

6. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not include other handicapping conditions that are "solely physical in nature." (Welfare

and Institutions Code section 4512, subd. (a).) 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.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

### **FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY**

A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations

that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

### **TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY**

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

### **SUBSTANTIAL DISABILITY**

The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life

areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

## **Evidence Presented at Hearing**

7. No evidence was presented, and claimant's mother did not claim, that claimant qualifies for regional center services under the categories of cerebral palsy or epilepsy.

8. 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 and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for over 27 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. She has also had training from Western Psychological Services in the administration of the Autism Diagnostic Observation Scale (ADOS) and training from IRC in the administration of the Autism Diagnostic Interview (ADIR). Dr. Stacy qualifies as an expert in the diagnosis of autism and intellectual disability, and in the determination of eligibility for IRC services based on autism, intellectual disability, and the fifth category.

9. Dr. Stacy reviewed reports pertaining to claimant. Those reports included: claimant's April 23, 2018, Individualized Family Services Plan (IFSP); an October 1, 2018, Developmental Semi-Annual Report from Bright Horizons Developmental Services (Bright Horizons); an October 5, 2018, progress report; claimant's March 8, 2019, IFSP;

and a March 8, 2019, Developmental Annual Report from Bright Horizons. The following is a summary of Dr. Stacy's testimony and the documentary evidence.

Dr. Stacy acknowledged the multiple diagnoses claimant's IFSP identifies, mainly, his optic nerve hypoplasia and albinism. Neither diagnosis qualifies claimant for regional center services.

Dr. Stacy explained that in order for a child to qualify for regional center services under the Early Start Program, a child must have a 33 1/3 percent delay in specified areas. To qualify for regional center services under the Lanterman Act, a child must have a qualifying condition in addition to a substantial disability in three or more major life activities, as appropriate for the child's age, and in accordance with applicable law. Finally, the DSM-5 is used to diagnose conditions that render a person eligible for regional center services under the Lanterman Act, whereas the DSM-5 is not necessary dispositive of eligibility for regional center services under the Early Start program.

In order to qualify for regional center services under intellectual disability, a person must have an IQ that is essentially two standard deviations below the mean, which is typically 70 to 75 or below, and corresponding deficits in adaptive functioning. For eligibility under autism, there must be records that show claimant has the characteristic features of autism, mainly, restrictive or repetitive interests. For eligibility under the fifth category, Dr. Stacy noted that while it is considered, the ARCA cautions using the fifth category for young children because the condition "similar to" intellectual disability or that requires treatment "similar to" an intellectual disability may not be appropriate given that this must be established over time.

Claimant was 25 months old when the 2018 Bright Horizons Developmental Semi-Annual Report was completed. Claimant's scores among the multiple domains tested were very scattered, ranging from average to poor. Notably, there was a difference in claimant's expressive and receptive language skills. While his receptive language skills were noted as poor (performing at the level of an 11-month-old child), his expressive language skills were observed to be average (performing at the level of a 26-month-old child).

There was nothing remarkable about claimant's October 5, 2018, progress report, which also showed marked differences in between claimant's expressive and receptive language skills.

Claimant's 2019 Bright Horizons Developmental Annual report, when claimant was 31 months old, showed essentially the same results as claimant's 2018 Bright Horizons Semi-Annual Developmental report. Claimant's receptive language skills were noted as very poor (performing at the level of a 12-month-old child), and his expressive language skills were observed to be average (performing at the level of a 29-month-old child).

Nothing in any of the records indicated claimant had restricted or repetitive interests, or other features of autism. Dr. Stacy noted that claimant has shown consistently strong cognitive skills in many areas over time, at least within the average or the upper end of the low average range. It is "very clear" claimant does not have autism or intellectual disability. Even just watching claimant during the hearing, Dr. Stacy noted that claimant was delightful, interactive, and does not present as a child with autism would typically present. She explained that claimant clearly has some language challenges, which also could be the root of any behavioral problems. Finally,



Dr. Stacy testified that claimant's visual problems may also be interfering with his cognitive skills.

Based on the records presented, Dr. Stacy concluded claimant did not qualify for regional center services under any qualifying category, and therefore concurred with IRC's determination that claimant was ineligible for regional center services.

10. Claimant's mother testified that she filed the fair hearing request because claimant is just not cognitively where he should be at this point. Claimant currently receives Bright Horizons services, which involve speech and language therapy, in home for one hour two times per week. Claimant's mother is very concerned because of his speech delay. Claimant does not play well with other children and will hit them and throw toys at them. Claimant likes brushing his teeth. Claimant is able to eat but is still messy. Claimant's fine motor skills have improved by the still struggles picking up small things with two fingers.

11. Claimant's parents were both present with claimant at the hearing and clearly showed concern for their son's well-being and development. Claimant's mother's testimony was sincere, credible, and heartfelt.

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of

handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. 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.

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 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.*)

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.

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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.

(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 psychosocial 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 psychosocial 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.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

## **Evaluation**

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Stacy. Based on the records provided, Dr. Stacy's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism or intellectual disability, and similarly did not qualify under the fifth category. Moreover, nothing in any records showed claimant is substantially disabled within the meaning of applicable law.

There is a marked difference between eligibility under the Early Start Program and regional center services under the Lanterman Act. While certainly claimant appears to have some speech delays, a speech delay alone does not render a child eligible for services under the more stringent Lanterman Act criteria. While claimant's parents are certainly commended for seeking all available avenues to assist claimant with his development, based on the records provided, it cannot be concluded that claimant meets the eligibility criteria for regional center services.

## **ORDER**

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

DATE: July 30, 2019

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 90 days.