

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019080668**

**DECISION**

Robert Walker, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 26, 2019, in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, Inland Regional Center, (IRC) represented the service agency.

Claimant's father represented claimant.

The matter was submitted for decision on September 26, 2019.

## **ISSUES**

Is claimant eligible for regional center services under the category of autism spectrum disorder, intellectual disability, or a disabling condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability?

## **SUMMARY**

Claimant is a 26-year-old man. In 2002, when claimant was eight years old, Inland Regional Center (IRC) evaluated him to determine whether he was eligible for regional center services. An intelligence scale was administered, and an autism diagnostic tool was administered. IRC found claimant to be ineligible for regional center services.

In April 2003, when claimant was nine years old, IRC did a second assessment. The same intelligence scale was administered, and an additional autism diagnostic tool was administered. (There was no evidence as to why a second assessment was done 15 months after the original determination that claimant was not eligible.) Again, IRC found claimant to be ineligible for regional center services.

In 2019, claimant again applied for regional services. After reviewing claimant's records, IRC determined there was no reason to believe claimant has a developmental disability and that he was not entitled to further "intake" services. Claimant appealed.

Claimant's records and other evidence presented in this proceeding show that he does not have a developmental disability. He is not entitled to regional center services.

## **Background**

1. Claimant is a 26-year-old male. He graduated with a high school diploma from Loma Linda Academy. As a child, he had a number of problems. He attended kindergarten, but when it was time for him to go to first grade, he was placed in junior first grade. He found it hard to accept changes in plans or routines. He had problems with verbal comprehension. He was provided with speech therapy to improve his use of language. He had social skill deficits and difficulty maintaining interactions with peers. In high school, peers bullied him. In 2003, when claimant was nine years old, a school psychologist at Loma Linda Academy suggested that he be evaluated for regional center services. IRC evaluated him and found him ineligible.

2. According to claimant's father, claimant, as an adult, continues to have problems.

3. Claimant's father encouraged claimant to, again, apply for regional center services. In 2019, claimant named his father as his authorized representative, and his father applied for regional center services for claimant. IRC denied the application.

4. IRC sent claimant's father a Notice of Proposed Action dated July 30, 2019, notifying him that claimant is ineligible for regional center services.

5. Claimant's father appealed; he filed a Fair Hearing Request dated August 12, 2019.

## **Developmental Disability**

6. In order to be eligible for regional center services one must have a developmental disability. Welfare and Institutions Code section 4512, subdivision (a),

defines “developmental disability.” It is 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 the individual. Four diagnoses qualify as grounds for finding a developmental disability – intellectual disability, cerebral palsy, epilepsy, and autism. There is a fifth qualifying category, which generally is referred to as the fifth category. It is a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.

7. Official notice was taken of excerpts from the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which IRC’s expert, Ruth Stacy, Psy.D., referenced during her testimony. As Dr. Stacy explained, the *DSM-5* provides the diagnostic criteria psychologists use to diagnose autism spectrum disorder or intellectual disability.

### **Diagnostic Criteria for Autism Spectrum Disorder**

8. 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 functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

### **Diagnostic Criteria for Intellectual Disability**

9. The *DSM-5* provides three diagnostic criteria that must be met to support a diagnosis of Intellectual Disability: deficits in intellectual functions (such as

reasoning, problem solving, abstract learning and thinking, judgment, and learning from experience) “confirmed by both clinical assessment and individualized standardized intelligence testing”; deficits in adaptive functioning “that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility”; and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. The *DSM-5* states, “[i]ndividuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 ( $70 \pm 5$ ). Clinical training and judgment are required to interpret test results and assess intellectual performance.”

### **Eligibility Under the Fifth Category**

10. Under the fifth category, the Lanterman Act provides assistance to individuals with a disabling condition closely related to intellectual disability or that requires treatment similar to that required by an individual with an intellectual disability. The fifth category does not include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (a).)

### **Claimant’s Father’s Testimony**

11. Claimant’s father testified that, claimant, as an adult, continues to have problems. He has been unsuccessful in completing college classes that are required to become a psychiatric technician. He lives with his parents. He applied to work as a police officer but was unable to pass the psychological examination. He becomes fixated with certain television programs. Once, he was arrested for impersonating a police officer.

12. Claimant's father testified that claimant earned a black belt in Tae Kwando, but unless he is interested in something, he just will not do it. If things do not go his way, he becomes verbally abusive. He easily becomes irritated; when driving, he reacts badly to other drivers. He is very musical; he plays keyboard instruments. He drives to church and plays at church. He volunteered to play at a Los Angeles food program for the homeless. He likes to volunteer. He cannot hold a job. He works part-time at the Guitar Center in Rancho Cucamonga, and he drives there. But he works only sporadically. He has no interest in earning a living. In 2018, he earned only \$9,000. Claimant's father testified that he must take care of claimant's bed, bedroom, and bathroom. Claimant has a good sense of direction and a good memory for phone numbers.

13. Next year, claimant no longer will be eligible for coverage under his parents' health insurance policy. His parents are concerned that when they no longer are living, claimant will become homeless.

### **Dr. Lamont's 2002 Evaluation**

14. On January 3, 2002, when claimant was eight years old, Dr. Lamont<sup>1</sup> conducted a psychological evaluation. He administered the Wechsler Intelligence Scale for Children, Third Edition (WISC III). Claimant attained a Verbal IQ score of 83, a Performance IQ score of 106, and a Full-Scale IQ score of 93.

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<sup>1</sup> Dr. Lamont's evaluation is referred to in a subsequent assessment report. There is no further identifying information concerning his identity or credentials.

15. Dr. Lamont also administered a Childhood Autism Rating Scale (CARS). Claimant earned a score of 21.

16. Dr. Lamont diagnosed claimant with Asperger's Disorder.<sup>2</sup> IRC found claimant to be ineligible for regional center services.

### **Dr. Robinson's 2003 Assessment**

17. Gina Robinson, Ph.D., an IRC staff psychologist, performed an assessment on April 3, 2003, when claimant was nine years old.

18. Dr. Robinson also administered the WISC III. Claimant attained a Verbal IQ score of 98, a Performance IQ score of 110, and a Full-Scale IQ score of 104.

19. Dr. Robinson administered the Autism Diagnostic Observation Schedule - Module Three (ADOS III). Dr. Robinson reported respondent's score as follows: Communication 0; Social 5; for a combined score of 5.

20. Dr. Robinson diagnosed Pervasive Developmental Disorder, Not Otherwise Specified.

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<sup>2</sup> Asperger's Disorder was a diagnosis under the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (*DSM-4*). Autism was a separate diagnosis. In 2013, the *DSM-5* replaced the *DSM-4*. Under the *DSM-5*, Asperger's Disorder, pervasive development disorder, and autism, among other diagnoses, no longer are discrete diagnoses. The *DSM-5* provides for a diagnosis of autism spectrum disorder, which incorporates some of the features of former diagnostic categories that were eliminated.

21. Dr. Robinson found that claimant did not have a developmental disability. She recommended that claimant be found not eligible for regional center services.

22. IRC found claimant to be ineligible.

### **Dr. Stacy's Testimony**

23. Dr. Robinson no longer works at IRC. Dr. Stacy testified about Dr. Lamont's evaluation and Dr. Robinson's assessment.

24. Since 2015, Dr. Stacy has been a staff psychologist with IRC. However, she has been on the IRC staff for over 20 years. Before she became a staff psychologist, she was a senior counsellor in the intake department. Dr. Stacy holds a Bachelor of Arts degree in psychology and sociology, a Master of Arts degree in sociology, and a Master of Arts degree in counseling psychology. Also, in 2008, she graduated with a Doctor of Psychology degree from Trinity College of Graduate Studies, Anaheim, California.

25. Dr. Stacy also reviewed a September 5, 2019, letter Ms. Zermeño wrote to claimant's father memorializing their informal meeting in which claimant's father explained his reasons for concluding that his son was eligible for regional center services. Dr. Stacy testified that, based on her review of Dr. Lamont's evaluation, Dr. Robinson's assessment, and Ms. Zermeño's letter, it was her opinion that claimant was ineligible for regional center services.

26. Dr. Stacy noted that Dr. Robinson incorporated the results of Dr. Lamont's evaluation in Dr. Robinson's assessment. Dr. Stacy noted that claimant's



score on the CARS that Dr. Lamont administered was 21, and Dr. Stacy testified that any score under 30 indicates minimal or no symptoms of autism.

27. Regarding claimant's scores on Dr. Robinson's administration of the WISC III, Dr. Stacy testified that the scores place claimant in the average range of intelligence. There is no suggestion of intellectual disability. Regarding Dr. Robinson's administration of the ADOS, Dr. Stacy testified that the ADOS is the gold standard for diagnosing autism. She said any score below 7 is in the non-autism-spectrum range, and claimant scored 5.

28. Dr. Stacy testified that, under the *DSM-5*, the criteria concerning autism has changed somewhat – from autism to autism spectrum disorder. But claimant's scores on the CARS and the ADOS are so low that the change does not result in a difference in diagnosis. Claimant's scores are not even close to indicating autism spectrum disorder.

29. Dr. Stacy testified that, in addition to not having a qualifying diagnosis, claimant does not have functional limitations that would result in a finding of a substantial disability.

## **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 criteria. The standard of proof 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.*, italics in original.) "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>3</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 deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning

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<sup>3</sup> The regulation still uses the former term "mental retardation" instead of "intellectual disability."

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.

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

### **Applicable Case Law**

10. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127, the Fourth District Court of Appeal discussed the language in the Lanterman Act regarding the fifth category and determined the language was not impermissibly vague. The appellate court explained that finding as follows (*Id.* at pp. 1128-1130.):

In the instant case, the terms “closely related to” and “similar treatment” are general, somewhat imprecise terms. However, section 4512(a) does not exist, and we do not apply it, in isolation. “[W]here the language of a statute fails to provide an objective standard by which conduct can be judged, the required specificity may nonetheless be provided by the common knowledge and understanding of members of the particular vocation or profession to which the statute applies.” [Footnote omitted.] Here, the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS and RC professionals and their determination as to whether an individual is developmentally disabled. General, as well as specific guidelines are provided in the Lanterman Act and regulations to assist such RC professionals in making this difficult, complex determination. Some degree of generality and, hence, vagueness is thus tolerable.

The language defining the fifth category does not allow such subjectivity and unbridled discretion as to render section 4512 impermissibly vague. The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.



While there is some subjectivity involved in determining whether the condition is substantially similar to mental retardation and requires similar treatment, it is not enough to render the statute unconstitutionally vague, particularly when developmentally [s/c] disabilities are widely differing and difficult to define with precision. Section 4512 and the implementing regulations prescribe an adequate standard or policy directive for the guidance of the RCs in their determinations of eligibility for services.

## **Evaluation**

11. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet to qualify for regional center services. Claimant has been diagnosed with Asperger's Disorder and pervasive developmental disorder, not otherwise specified, but neither of those is a diagnosis that entitles one to regional center services. Claimant's father justifiably wants to make sure his son receives all services for which he is eligible. And it certainly is understandable that claimant's father is worried about claimant. However, a preponderance of the evidence does not show that claimant suffers from autism spectrum disorder or intellectual disability. And a preponderance of the evidence does not show that claimant meets the criteria for eligibility under the fifth category.

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## **ORDER**

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

DATE: October 10, 2019

ROBERT WALKER

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.