

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2019110973**

**DECISION**

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 7, 2020.

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

Claimant's sister represented claimant, who was present during the hearing.

The matter was submitted on January 7, 2020.

## **SUMMARY**

Claimant contends that he is eligible for regional center services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq., (Lanterman Act) based on having an autism spectrum disorder. Claimant failed to prove that he has an autism spectrum disorder and failed to prove that he is entitled to regional center services.

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 37-year-old male who received special education services while in school. He graduated from high school.

2. By a notice of proposed action dated October 8, 2019, IRC notified claimant that IRC had determined that claimant was not eligible for regional center services. Claimant's sister submitted a fair hearing request dated November 5, 2019, appealing IRC's decision. Claimant authorized his sister to represent him. At the hearing, claimant's sister, on claimant's behalf, stipulated that claimant contends he is eligible for regional center services based on having an autism spectrum disorder.

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

3. 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, Holly A. Miller, Psy.D., referenced during her testimony.

Dr. Miller explained that the *DSM-5* provides the diagnostic criteria psychologists use to diagnose autism spectrum disorder.

4. 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.

### **Claimant's 1995 Individualized Education Program**

5. A June 15, 1995, report regarding an Individualized Education Program (IEP) by the Los Angeles Unified School District, Division of Special Education, provides that claimant met eligibility requirements for special education services. At the time of the report, claimant was 12 years old and in the fifth grade. He had moved from Mexico to the United States when he was nine years old, and his primary language was Spanish. Claimant was eligible for special education services because of exceptional needs regarding language and speech and because of "hard of hearing." No other exceptional needs criteria were noted. There is a note that claimant wore two hearing aids. Regarding claimant's level of expressive language, there is a note that, in English, he was very limited in his speaking. He communicated mostly with gestures, sounds, and three-word-sentences. Much of his pronunciation was unintelligible. Regarding claimant's level of receptive language, there is a note that his skills were poor. He did not understand simple directions. Rather, he relied on visual cues, i.e., looking to other students to understand what he was being asked to do. Regarding reading, there is a note that claimant was in an English-as-a-second-language program and that he

demonstrated poor visual memory of words. Regarding “social/emotional,” there is a note:

Mostly because of the language barrier, [claimant] does not actively participate with the class. He speaks most often in Spanish to another Hispanic boy. He participates in physical activities (play) with the children and very infrequently demonstrates aggressive behavior.

### **Claimant’s Riverside University Health System (RUHS) Medical Records**

6. Claimant had a physical examination on August 2, 2018. He was 35 years old. A medical note provides:

Moved from Mexico to the States at age 9 [years old].  
[History of] hearing loss at early age. Has always been to Special education. Has never seen a neurologist. No [history of] seizures. Uses hearing aids. Denies substance use.  
Mother states he gets aggressive sometimes, and he says he wants to hurt himself. He gets frustrated when people don’t understand what he wants to say. This behavior started at age 20. Mom states he improves when he gets temporary jobs. Denies feeling hopeless or suicidal.

7. At the August 2, 2018, examination, the physician assessed a speech problem and recommended a speech therapy evaluation.

8. Claimant had another physical examination just one month later, on September 12, 2018. He was 35 years old. The medical notes are similar to those regarding the August 2, 2018, examination except that there are additional notes concerning the need for weight loss.

9. Claimant had a physical examination on July 3, 2019. He was 36 years old. The medical notes are similar to those regarding the August 2, 2018, examination except that there are additional notes that claimant has a history of developmental delay and that he is being referred to a special needs program.

10. On August 7, 2019, claimant was seen at the RUHS Family Care Clinic. The medical notes reflect much of the information in the earlier notes, plus the following:

[Claimant] is a pleasant 36-[year-old] male . . . . He was brought into the clinic by his sister . . . . The [patient's] father used to be his primary caregiver; however, he passed away a few years ago. . . .

[P]er sister, the [patient] "has developmental delay" . . . . He completed high school and was able to work in a restaurant back in Georgia. . . .

[His sister] wants to provide her brother with whatever care he necessitates and to help him find a job to alleviate his depressive symptoms resulting from not being able to find work. [Patient] has had multiple job interviews but has not received any calls back from employers. [Patient] is very active in doing housework and helps his sister and mom with chores, including cleaning up the backyard.

[¶] . . . [¶]

At baseline, [patient] has difficulty with speech, but he is able to be understood when talking.

Psychiatric/Behavioral: Positive for depression. Negative for suicidal ideas.

Per sister, since [patient] stopped working, he feels more down and depressed to the point of saying that he doesn't want to live anymore. That being said, the [patient] denies suicidal and homicidal ideations, and there are no weapons at home.

[¶] . . . [¶]

[W]e requested that family look into Inland Regional services.

11. On September 4, 2019, claimant was seen at the RUHS Family Care Clinic. The medical notes are somewhat different from what they were just one month earlier.

[Claimant] is a 36-[year-old] male with a [history of] Intellectual Developmental Delay, who presents for Follow-up . . . .

[Patient] presents with feelings of depression with suicidal ideation and plan. Per sister, this has been a chronic problem, but he has become worse in the recent months. . .

[Patient] reports that he des not want to live anymore and

wants to die. He has thought about drinking rubbing alcohol until he dies and states he could do it any day now. Per sister, he usually [is] at home in his room by himself . . . . [Screening] indicates moderate-severe depression. But screening was limited by [patient's] understanding of the questions.

[¶] . . . [¶]

Psychiatric/Behavioral: Positive for decreased concentration, dysphoric mood, sleep disturbances, and suicidal ideas.

Suicidal ideation with plan.

IMPRESSION: 1. Encounter for psychological evaluation; 2. Depression, unspecified depression type; 3. Suicide ideation.

## **Dr. Miller's Testimony**

12. Dr. Miller is a staff psychologist at IRC, where she has worked since 2016. She conducts psychological assessments 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 the University of La Verne in 2006; and Doctor of Psychology Degree from the 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.

13. Dr. Miller was a member of the interdisciplinary, eligibility-determination team that considered whether claimant was eligible for regional center services. She reviewed all of the records claimant supplied and concluded that claimant is not eligible for regional center services. Dr. Miller testified at the hearing regarding her analysis of the records and her opinion that claimant is not eligible for regional center services.

14. Based on her review of the records, Dr. Miller opined that claimant does not meet the diagnostic criteria for autism spectrum disorder. Additionally, based on her record review, she did not believe an additional assessment by IRC was warranted because there were no records indicating that claimant suffered from deficits that could be related to autism spectrum disorder before he was 18 years old. Dr. Miller noted that the records she reviewed support a finding that claimant has deficits in speech and language and that he has a hearing loss.

15. If claimant had suffered from autism during the developmental stage, Dr. Miller would have expected to see something in his school records raising concerns that he might be autistic. However, based on the IEP document claimant provided, he was eligible for special education services because of exceptional needs regarding language and speech and because of "hard of hearing." No other exceptional needs criteria were noted. Also, the IEP lists goals, and the goals focus primarily on speech and language needs and claimant's hearing deficit. Exceptional needs regarding language and speech and "hard of hearing" are not conditions that make one eligible for regional center services. Dr. Miller did not see anything in the school records that indicated claimant might have an autism spectrum disorder.

16. Moreover, there were a few behaviors reported in the IEP that are not consistent with a diagnosis of autism spectrum disorder. It was reported that claimant



communicated mostly with gestures, sounds, and three-word-sentences. It was reported that claimant relied on visual cues, i.e., looked to other students to understand what he was being asked to do. Claimant spoke most often in Spanish to another Hispanic boy. He participated in physical play activities with the children and very infrequently demonstrated aggressive behavior. Dr. Miller testified that the non-verbal communication skills reported are skills that a person with autism spectrum disorder ordinarily would not have. Also, it would be unusual for a person with an autism spectrum disorder to engage in physical play activities with other children. Those descriptions of claimant's behaviors reinforced Dr. Miller's conclusion that claimant does not have an autism spectrum disorder.

17. Dr. Miller testified that there is nothing in the RUHS medical records that suggests that claimant has an autism spectrum disorder. Those records suggest a speech deficit, a hearing deficit, and possibly a psychological disorder – but not an autism spectrum disorder.

### **Claimant's Evidence**

18. As part of claimant's application to IRC, he provided the 1995 IEP and the RUHS medical records. IRC introduced those in evidence. Claimant offered no evidence. He did not offer other documents. He had no witnesses. He did not testify. His sister declined to testify.

## 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 eligibility 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.*, 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 and Regulatory Authority

3. 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 . . .

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4. 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.

5. California Code of Regulations, title 17, section 54000,<sup>1</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

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<sup>1</sup> The regulation still uses the former term "mental retardation" instead of "intellectual disability."

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.

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. 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).)

8. 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. Moreover, in this case, there is no evidence that suggests that claimant qualified for special education services based on an autism spectrum disorder.

## **Evaluation**

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet to qualify for regional center services. There is no question that claimant suffers from a speech and language impairment for which he received special education services. There is no question that he is hard of hearing. Claimant's sister justifiably wants to make sure her brother receives all the services for which he is eligible. However, the evidence does not support a finding that claimant has an autism spectrum disorder. Claimant failed to prove that he is eligible for regional center services.

## **ORDER**

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

DATE: January 22, 2020

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.