

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2019120774**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 23, 2020, in San Bernardino, California.

Stephanie Zermeño, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on January 23, 2020.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder (autism)?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a four-year-old boy who received Early Start Services, Speech Therapy, and Occupational Therapy prior to the age of three. Claimant was adopted by his mother and father as a newborn. Claimant's birth mother used methamphetamine and other dangerous/unknown drugs prior to claimant's birth. Claimant lives at home with his parents and three siblings.

2. On November 18, 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 December 8, 2019, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination. Claimant's mother expressed that she wanted claimant evaluated for autism, which IRC did not do during the intake evaluation.

## **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.

## **Evidence Presented at Hearing**

5. 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 determination of eligibility for IRC services based on autism.

6. Dr. Stacy reviewed several reports pertaining to claimant. Those reports included: an Early Start Child and Family Social Assessment dated October 11, 2016; a

Developmental Evaluation Assessment Report dated March 9, 2018; claimant's May 1, 2019, Individualized Education Program plan (IEP); and multidisciplinary preschool assessment report dated May 10, 2018. The following is a summary of Dr. Stacy's testimony and the documentary evidence.

7. The 2018 Developmental Evaluation Assessment Report showed claimant was delayed for his age in communication, cognitive abilities, social and emotional reciprocity, physical development, and adaptive behavior. However, he was receiving speech therapy and occupational therapy to assist with those deficits.

8. In the May 10, 2018, Multidisciplinary Assessment Report, the school psychologist conducted multiple assessments but did not conduct one for autism. Dr. Stacy opined that this was because nothing in the report indicated claimant's behaviors or characteristics were consistent with autism. The school psychologist administered the Toni Linder Transdisciplinary Play Based Assessment (TPBA2), which tests cognitive development, emotional and social development, sensorimotor development, and communication development. Claimant, who was approximately 35 months old at the time, scored in the 24-month range for most categories, except that he scored at 19 months for communication. Claimant showed significant developmental "lag," but the report also noted claimant had good eye contact, was happy, cooperative, and responded appropriately to the examiner. It also showed claimant displayed affection to toys and others, reacted to others, regulated his emotions, had appropriate social and emotional responses, showed nurturing and role playing abilities, and showed appropriate social referencing. These characteristics are not consistent with autism.

The school psychologist also administered the Developmental Assessment of Young Children, Second Edition (DAYC-2). That assessment measures cognitive and

communication abilities. Claimant scored in the low average range overall, which does not indicate he suffers from a substantial disability.

The school psychologist also issued the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3). This assessment was an evaluation filled out by claimant's mother. On the Vineland-3, claimant showed deficits in his adaptive skills for a child of his age, although he showed borderline motor skills.

Based on the results of the overall assessment, the school psychologist found claimant eligible for special education services under the categories of speech and language impairment and specific learning disability. There were no indications that claimant had characteristics consistent with autism.

9. Since the 2018 assessment, claimant has been receiving special education services under the categories of specific learning disability and speech and language impairment. According to claimant's May 1, 2019, IEP, claimant is able to listen to stories during story time; he has met his goals in communication; he is able to express his wants and needs in the classroom; he is able to interact with others on the playground; and he will participate in group activities. The IEP describes claimant as a very happy little boy. There are no indications in the IEP of the characteristic features of autism, as listed in the DSM-5.

10. Based on her review of the above-referenced records, Dr. Stacy, along with the IRC eligibility team, concluded there was nothing in the records to show

claimant met the DSM-5 criteria for autism, and was thus ineligible for regional center services.<sup>1</sup>

11. Claimant's mother testified at the hearing. She clearly showed concern for claimant and her testimony was sincere, credible, and heartfelt. Her testimony is summarized as follows: Many of the records submitted are old and claimant's behavior has changed in the past year. Claimant has been kicked out of occupational therapy. He does not interact with other students in school; he sits in the regular classroom by himself and refuses to play or eat lunch with anyone. Claimant bites himself all the time at school and at home. His arm is scarred because of the biting. Claimant has bitten holes in his long-sleeved shirts. Claimant's mother believes claimant's speech is now adequate, but sometimes it takes some prompting to get him to talk. Claimant is still attending speech therapy approximately four times per week.

Sometimes, it is as if claimant is mentally unaware of what is going on around him. Claimant has not been evaluated for ADHD, although claimant's family doctor said claimant has autism. Claimant is scheduled to have a psychological assessment at Gunn Psychological Services in Rancho Cucamonga next week. Claimant's mother said all she wants is to have claimant assessed so that he can obtain the services he needs.

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<sup>1</sup> One eligibility team determination that pre-dated this matter occurred on April 25, 2018, and included a psychological assistant, medical doctor, nurse, and program manager. The final eligibility team determination relevant to this matter occurred on November 13, 2019, and included Dr. Stacy, a medical doctor and program manager.

## 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 of Developmental Services 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" or "solely psychiatric" 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>2</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.

(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

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<sup>2</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.

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. Based on the records provided, Dr. Stacy's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism. 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 claimant's mother is commended for seeking all available avenues to assist claimant with his ongoing development, based on the records provided, it cannot be concluded that claimant meets the eligibility criteria for regional center services at this time.

## **ORDER**

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

DATE: January 29, 2020

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.