

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2020010231

DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 2, 2020, in San Bernardino, California.

Senait Teweldebrhan, Fair Hearing Representative, Inland Regional Center, appeared on behalf of Inland Regional Center (IRC).

No appearance was made by or on behalf of claimant.

The record was closed and the matter was submitted for decision on March 2, 2020.

FACTUAL FINDINGS

IRC'S Denial of Claimant's Application for Eligibility

1. Claimant is a nine-year-old girl who has been diagnosed with Williams Syndrome. Before claimant was three years old, IRC provided Early Start services for her. However, when she turned three years old, IRC determined that she was not eligible for Lanterman Act¹ services, i.e., not eligible to transition into the program IRC administers for people over three years old with developmental disabilities.

2. When claimant was seven years old, her mother applied for a determination that claimant was eligible for Lanterman Act services for claimant. An IRC eligibility-determination team reviewed claimant's records and concluded that an evaluation was not necessary to determine whether claimant was eligible for Lanterman Act services. Thus, IRC provided no intake services. The eligibility-determination team, based on claimant's records, concluded that claimant was not eligible for Lanterman Act services.

3. IRC sent claimant's mother a notice of proposed action (NOPA) dated November 5, 2019, advising her that IRC had determined that claimant was not eligible for Lanterman Act services. The NOPA provided:

[Claimant] does not currently have a "substantial disability"
as a result of Intellectual Disability, Autism, Cerebral Palsy,

¹ The Lanterman Developmental Disabilities Services Act is found at Welfare and Institutions Code section 4500 et seq.

[or] Epilepsy. And [claimant] also does not appear to have a disabling condition related to intellectual disability or to need treatment similar to what individuals with an intellectual disability need. Therefore, IRC concluded that [claimant] is not currently eligible for IRC services for people with developmental disabilities, as that term is defined in California Welfare and Institutions Code (WIC) Section 4512.

4. Claimant's mother appealed. She filed a fair hearing request, which is dated November 26, 2019.

5. The Office of Administrative Hearings sent IRC and claimant's mother a notice of hearing notifying them that the hearing in this matter was scheduled for March 2, 2020, at 10:00 a.m. at the IRC. The notice of hearing sent to claimant's mother was sent to the same address claimant's mother identified on the fair hearing request. IRC also sent claimant's mother a packet containing IRC's exhibits and a list of witnesses it intended to call at hearing. That packet also specified the date, time, and location of the hearing, and was sent by certified mail. Claimant's mother did not request a continuance as provided by Welfare and Institutions Code section 4712 or otherwise provide good cause for her non-appearance.² Accordingly, the matter proceeded as scheduled.

² Welfare and Institutions Code section 4712, subdivision (a), provides that a hearing shall be held within 50 days of the filing of the fair hearing request, *unless* a continuance is granted for good cause.

Diagnostic Criteria for Autism

6. 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

7. 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.

8. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling conditions closely related to an intellectual disability or that require treatment similar to that required by an individual with an intellectual disability. (Welfare and Institutions Code section 4512, subdivision (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.

Claimant's Records

9. On June 24, 2013, IRC completed an Early Start Individualized Family Service Plan (IFSP) for claimant. Claimant was 26 months old. IRC used the Michigan Receptive Expressive Expression measure and the Emergent Language Scale to evaluate claimant's levels of development. Claimant's social/emotional development was assessed as 27 months. Adaptive/self-help development was assessed as 20 to 23 months for feeding, 16 months for toileting, and 20 to 23 months for dressing. Fine motor development was assessed as 16 to 19 months, with four out of six skills being in the 20 to 23-month range. Cognitive development was assessed as 16 to 19 months, with four out of five skills being in the 20 to 23-month range. Communication development was assessed at 19 to 20 months for receptive and 16 to 20 months for expressive communication, with two out of three skills being in the 20 to 23-month range. Gross Motor development was assessed at 12 to 15 months, with seven out of eight skills being in the 16 to 19-month range. IRC found claimant eligible for early start services because of an established risk associated with her diagnosis of Williams Syndrome.

10. In March 2014, a school psychologist for Murrieta Valley Unified School District conducted a preschool psycho-educational speech and language assessment. The psychologist administered the Differential Scales – Second Edition (DAS-II), a battery of tests used to measure cognitive and learning abilities. On the DAS-II, claimant obtained a general conceptual ability score of 89, which is in the below-average range; a verbal cluster of 91, which is in the average range; and a nonverbal cluster of 88, which is in the below-average range. To evaluate claimant's adaptive and maladaptive behavior, the psychologist administered the Scales of Independent Behavior – Revised (SIB-R). On the SIB-R parent rating, claimant obtained a standard

score of 63. The psychologist concluded that the test results indicated that claimant had adequate cognitive, academic, and language skills but that, because of her diagnosis of Williams Syndrome, she was eligible for special education services under the category of established medical disability.

11. On May 12, 2014, claimant was just over three years old, and IRC did an evaluation to determine whether she was eligible to transition from the early start program into the Lanterman Act program. IRC determined that claimant was not eligible for Lanterman Act services and sent her family a NOPA.

12. In September 2016, a school psychologist for Murrieta Valley Unified School District administered the DAS-II. The results are reported on page 4 of the September 2019 Murrieta Valley Unified School District psycho-educational assessment. In 2016, claimant scored an 86 for Verbal Cluster, 91 for Nonverbal Cluster, and 67 for Spatial Cluster. Those subtest-scores produced a General Conceptual Ability Score of 76.

13. In September 2019, a school psychologist for Murrieta Valley Unified School District conducted a psycho-educational assessment. Claimant was eight years old and in the third grade. The psychologist administered the Wechsler Nonverbal Scale of Ability, (WNSA) which is designed to measure general cognitive ability. Claimant obtained a full-scale score of 78, which is in the borderline range. In the subtests, claimant obtained low to average scores. On the Woodcock-Johnson IV Test of Achievement, (WJIVTA) claimant scored average to low average in reading, very low in writing, low in oral language, and low average in oral expression. One of claimant's teachers administered the Adaptive Behavior Assessment System – Third Edition (ABAS-3), which is used to measure adaptive functioning. Claimant obtained an overall general adaptive composite (GAC) standard score of 72, which is in the low range. The

psychologist concluded that claimant was eligible for special education services under the categories of specific learning disability, other health impairment, and speech and language impairment. Claimant's September 27, 2019, individualized education program (IEP) provides that, due to claimant's diagnosis of Williams Syndrome, she receives special education services under the special education category of other health impairment.

Testimony of Sandra Brooks, Ph.D.

14. Sandra Brooks, Ph.D., is a licensed clinical psychologist and has been a staff psychologist with IRC since 2007. In 2006, Dr. Brooks earned a doctor's degree in clinical psychology from Loma Linda University. At IRC, Dr. Brooks conducts psychological evaluations to determine eligibility for services and makes differential diagnoses regarding developmental disabilities versus mental health, communication, social-emotional, and learning disorders.

15. Dr. Brooks testified about the criteria for determining whether one is eligible to receive Lanterman Act services. She also testified about claimant's records. Dr. Brooks testified that claimant's records show that she does not have a developmental disability and is not eligible for Lanterman Act services.

16. Dr. Brooks testified that Welfare and Institutions Code section 4512, subdivision (a), sets forth the eligibility criteria for Lanterman Act services. To be eligible, one must have a developmental disability that originates before one attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for the individual. The term developmental disability includes intellectual disability, cerebral palsy, epilepsy, and autism. The term also includes disabling conditions closely related to intellectual disability or that require

treatment similar to that required for individuals with intellectual disability. Dr. Brooks testified that claimant's records show that she does not have any of these developmental disabilities. There is no evidence that claimant has cerebral palsy, epilepsy, or autism.

17. Dr. Brooks testified that claimant's records show that, while she has a learning disability, she does not have intellectual disability. In order to be diagnosed with intellectual disability, generally, one must obtain an overall intelligence quotient (IQ) below 70 on a standardized intelligence test, and the subtest scores must not display substantial scatter, i.e., the subtest scores must all be fairly near 70. Before an individual is diagnosed with intellectual disability, subtest scores should indicate global disability. Further, claimant is not eligible under the fifth category, i.e., she does not have a disabling condition that is closely related to intellectual disability or that requires treatment similar to that required for individuals with intellectual disability.

18. Dr. Brooks testified about claimant's diagnosis of Williams Syndrome, which is a genetic disorder that affects many parts of the body. Individuals with Williams Syndrome often have distinctive facial features, including a broad forehead, short nose, and full cheeks. The appearance has been described as elfin. Mild to moderate intellectual disability, with particular problems with visual – spatial tasks, is typical. Verbal skills are generally not seriously affected. Dr. Brooks noted that Williams Syndrome is not a developmental disability listed in Welfare and Institutions Code section 4512, subdivision (a).

19. Dr. Brooks pointed out that there is an important difference between needing a service as a treatment and being able to benefit from a service. An extremely large segment of the population might benefit from a service such as

transportation or job coaching, but the issue in the fifth category is whether one needs a particular service in order to treat or ameliorate intellectual disability.

20. Dr. Brooks said that the preschool psycho-educational speech and language assessment conducted at Murrieta Valley Unified School District in March 2014 was very comprehensive. On the DAS-II, claimant obtained a general conceptual ability score of 89, which is in the below-average range; a verbal cluster of 91, which is in the average range; and a nonverbal cluster of 88, which is in the below-average range. On the Preschool Language Scale subtests, claimant scored from 82 to 97, which demonstrates significant scatter. This suggests claimant does not have global intellectual disability. The test results indicated that claimant had adequate cognitive, academic, and language skills. It was because of claimant's Williams Syndrome diagnosis that Murrieta Valley Unified School District found her eligible for special education services under the category of established medical disability. Dr. Brooks testified that there was nothing in the March 2014 testing that would support a conclusion that claimant has intellectual disability, has a disabling condition that is closely related to intellectual disability, or has a disabling condition that requires treatment similar to that required for individuals with intellectual disability.

21. Dr. Brooks stated that the scatter in the September 2016 DAS-II subtests indicates there is no global intellectual disability and that a diagnosis of intellectual disability would not be appropriate. Dr. Brooks said claimant's low score – 67 – for Spatial Cluster probably results from her having Williams Syndrome.

22. Dr. Brooks testified concerning the September 2019, Murrieta Valley Unified School District psycho-educational assessment. She pointed to the statement of the psychologist who administered the WNSA: "[Claimant] had a full-scale score of 78, which is in the borderline range. However, there were discrepancies between the

subtests, indicating low to average scores, which is similar to previous assessments.” On the Woodcock-Johnson IV Test of Achievement, claimant scored from very low to average in reading, writing, language, and expression. Dr. Brooks testified that this lack of global consistency is inconsistent with a diagnosis of intellectual disability. Dr. Brooks pointed to the school psychologist’s conclusion that claimant was eligible for special education services under the categories of specific learning disability, other health impairment, and speech and language impairment. Claimant’s September 27, 2019, individualized education program (IEP) provides that, due to claimant’s diagnosis of Williams Syndrome, she receives special education services under the special education category of other health impairment. Dr. Brooks emphasized that there is nothing in the psychologist’s recommendation or the school district’s decision that would suggest that claimant has intellectual disability. The psychologist did not recommend that claimant be found eligible for special education services under the category cognitive disability, and the school district did not find her eligible under the category cognitive disability.

23. Dr. Brooks concluded that claimant is not eligible for Lanterman Act services under the second prong of the fifth category, i.e., a disabling condition that requires treatment similar to that required for individuals with intellectual disability. Treatments needed for intellectual disability are characterized by repetition and by providing information and instruction in small, discrete segments. That is not what claimant needs. She has learning disabilities that require focusing on specific skills.

Specific Findings

24. Claimant does not have intellectual disability, cerebral palsy, epilepsy, or autism.

25. Claimant does not have a disabling condition closely related to intellectual disability.

26. Claimant does not have a disabling condition that requires treatment similar to that required for individuals with intellectual disability.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) "'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.) Claimant has the burden of proving that she is eligible for Lanterman Act services.

2. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

The Law Regarding Eligibility

3. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability.

"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.

4. Welfare and Institutions Code section 4512, subdivision (b), concerns the determination of which services and supports are necessary for each consumer.

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the

effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

5. Welfare and Institutions Code section 4512, subdivision (b), lists examples of services and supports a consumer might need.

6. Welfare and Institutions Code section 4512, subdivision (l)(1), defines substantial disability as that term is used in Welfare and Institutions Code section 4512, subdivision (a).

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

7. Welfare and Institutions Code section 4512, subdivision (l)(2) restricts a reassessment of a determination of substantial disability: “A reassessment of

substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.”

8. Welfare and Institutions Code section 4642, subdivision (a)(1), provides for eligibility for initial intake and assessment services.

Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers. In addition, any infant having a high risk of becoming developmentally disabled may be eligible for initial intake and assessment services in the regional centers. For purposes of this section, “high-risk infant” means a child less than 36 months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population.

9. Welfare and Institutions Code section 4643, subdivision (a), provides that assessment may include collection and review of historical diagnostic data.

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 and is conditional upon receipt of the release of information specified in subdivision (b).

10. Welfare and Institutions Code section 4643, subdivision (a), provides that a regional center may consider evaluations and tests from other sources.

In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

11. Without administering any tests, a regional center may be able to determine whether an applicant is eligible for services. A regional center may be able to do that based on historical data and based on evaluations and tests that have been performed by, and are available from, other sources. Thus, a regional center may be able to act on an application for services without providing intake and assessment services.

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ORDER

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

DATE: March 16, 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.