

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2020020785**

**DECISION**

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on August 24, 2020.<sup>1</sup>

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<sup>1</sup> In light of the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-33-20 arising out of the COVID-19 pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure and facilitate physical distancing and to shelter in place; and in order to protect the health and safety of all public and OAH personnel; this matter was conducted telephonically.

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

Claimant is eight years old and is represented by his mother. No one appeared at the hearing on claimant's behalf.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on August 24, 2020.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a substantial handicap as a result of autism or a handicapping condition closely related to intellectual disability, or that requires treatment similar to that required by individuals with an intellectual disability?

## **CASE SUMMARY**

IRC established that claimant is not eligible for regional center services based on a substantial handicap as a result of autism or a handicapping condition closely related to intellectual disability, or that requires treatment similar to that required by individuals with an intellectual disability.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 20, 2019, IRC notified claimant that he was not eligible for regional center services because he does not have a disability that qualifies him to receive such services.

2. On January 21, 2020,<sup>2</sup> claimant's mother filed a fair hearing request and provided the following reasons for requesting a hearing:

Inaccuracies in the report. Doctor recently upgraded his level of autism to level 2. School is working on his triennial IEP & multidisciplinary report for 2020. Also requesting review of current school assessment.

Claimant's mother described what was needed to resolve the complaint as: "Services & Supplemental insurance through MediCal."

3. On August 24, 2020, the record was opened, jurisdictional documents were presented, and documentary evidence and sworn testimony were received from IRC. No appearance was made by or on claimant's behalf, despite the service of all required jurisdictional notices and other documents.<sup>3</sup> Despite claimant's failure to

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<sup>2</sup> There was a typo on claimant's fair hearing request form such that the request date was hand-written as "1/21/2018."

<sup>3</sup> The following notices were served on claimant via U.S. Mail to the address provided by claimant in the Request for Fair Hearing: Notice of Hearing setting the

appear, this matter proceeded on the merits, at IRC's request, as required pursuant to Welfare and Institutions Code section 4712, subdivision (a). That subdivision requires a hearing to be held within 50 days of the date a claimant's fair hearing request is filed unless good cause is found to continue the matter. Here, no good cause was presented to continue the hearing. Following the presentation of the evidence, the record was closed and the matter was submitted.

## **Background**

4. Claimant is eight years old and lives with his parents, and two sisters, ages 15 and 16. Claimant's father is in the U.S. Navy. Per claimant's mother, his 15-year-old sister has autism and receptive and expressive speech delay; his 16-year-old sister has high functioning autism and anxiety. His paternal grandfather is reported to have autism.

## **Applicable Diagnostic Criteria**

### **AUTISM SPECTRUM DISORDER**

5. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) contains the diagnostic criteria used for Autism Spectrum Disorder (ASD), as follows: persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities;

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hearing for March 24, 2020; General Orders issued by the Director of the Office of Administrative Hearings continuing the matter; an order setting August 24, 2020, as the new hearing date; and an order converting the August 24, 2020, hearing to a telephonic hearing.

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.

## **INTELLECTUAL DISABILITY**

6. The *DSM-5* also 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.

## **ELIGIBILITY UNDER THE FIFTH CATEGORY**

7. 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).)

## **Evidence Presented at Hearing**

8. Ruth Stacy, Psy.D., is a licensed clinical psychologist and has served as staff psychologist at IRC for the past five years. However, she has been on the IRC staff for over 30 years, and previously worked as a consumer services coordinator, and as an intake and assessment counselor for 16 years. Her duties as staff psychologist include

reviewing records and conducting evaluations to assist IRC's multidisciplinary eligibility team to determine if potential clients are eligible for services. Dr. Stacy conducted a psychological assessment of claimant, and prepared a written report dated November 27, 2019. Her testimony was consistent with her report.

9. Dr. Stacy explained that in order to be eligible for regional center services under the Lanterman Act, claimant must have a developmental disability of autism, epilepsy, cerebral palsy, intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that for individuals with an intellectual disability (fifth category), originating before claimant attains 18 years of age and that continues, or is expected to continue, indefinitely and constitutes a substantial disability for claimant. Dr. Stacy explained that in order to determine whether a diagnosis of a developmental disability is substantially disabling so as to qualify for regional center services, there must be significant functional limitations in at least three of the seven life activities listed in California Code of Regulations, section 54001, which are "self-care," "receptive and expressive language," "learning," "mobility," "self-direction," "capacity for independent living," and "economic self-sufficiency." Because claimant is only eight years old, the life activities "capacity for independent living" and "economic self-sufficiency" do not apply.

10. Dr. Stacy explained that claimant's school district provides special education services under Title 5,<sup>4</sup> whereas regional centers are governed by Title 17.<sup>5</sup> Title 5 is far less stringent than the criteria for receiving services from the regional center under Title 17. The school district can provide special education services if an

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<sup>4</sup> California Code of Regulations, Title 5, section 3030.

<sup>5</sup> California Code of Regulations, Title 17, section 54000 et. seq.

individual displays “autistic-like” behaviors, it is not necessary that the child meet the full criteria for a diagnosis of autism.

### **CLAIMANT’S PREVIOUS ASSESSMENTS AND RECORDS**

11. Under claimant’s Individualized Education Program (IEP) dated May 9, 2019, he was eligible to receive special education services on the basis of a primary disability of “other health impairment.” The IEP noted that claimant had adaptive skills, he could care for his needs within the school setting, and he could effectively communicate with staff and peers. Per Dr. Stacy, “all of which are contrary to deficits observed under a diagnosis of autism.” An addendum to the IEP, dated March 10, 2020, listed “low incidence disability,” and “autism” as claimant’s primary disability. The report stated, “[H]e is bright and enthusiastically participates in classroom discussions and is great at providing oral responses.” Again, Dr. Stacy pointed out that this behavior “is not consistent with a substantial disability.” Claimant displays negative behavior when asked to perform a non-preferred task and he is easily bored when required to wait. Dr. Stacy said this is a “clear indication of ADHD.”<sup>6</sup> Claimant’s teachers reported that he frequently states that he is dizzy or his stomach hurts, in an effort to go to the nurse’s office. When asked to return to class, a directive that he does not want to do, he becomes limp and pretends to cry. Dr. Stacy explained that “this behavior displays a social awareness which is not consistent with autism.”

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<sup>6</sup> ADHD is Attention Deficit Hyperactivity Disorder. The *DSM-5* contains the diagnostic criteria used for ADHD, which can be summarized as an ongoing pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development.

12. An Adaptive Physical Education performance review in March 2020, reported that claimant had difficulty with fine motor skills and balance, but there was no evidence of a regional center qualifying condition.

13. When claimant was one year and eight months old, he was referred by IRC to Gaynell Laptosky, Ph.D., a clinical psychologist, due to concerns that claimant was displaying early features of ASD. In his report dated September 9, 2013, Dr. Laptosky wrote that claimant "exhibited the ability to use and interpret gestures, meaningful eye contact, spontaneous social mediation, and a high level of social interest." Claimant was friendly and interactive . . . " Dr. Laptosky concluded: "It is my impression that [claimant's] presentation is atypical of that seen in children who are at risk for ASD."

Dr. Laptosky completed a second assessment in November 2014, "to identify signs/symptoms of intellectual disability and/or ASD." He observed age appropriate skills and claimant giggled and appeared "socially responsive." According to Dr. Stacy, this is atypical of ASD. Dr. Laptosky concluded that claimant's overall presentation was inconsistent with that seen in children at risk for ASD.

On the Childhood Autism Rating Scale (CARS2-ST), claimant scored 21.0 with minimal to no symptoms of ASD. A score of 30 or higher is indicative of ASD. The Vineland Adaptive Behavior Scale assesses functioning in the domains of communication, daily living skills, socialization, and motor skills, and is widely used to assess for the deficits in adaptive behavior which are associated with autism and mental retardation. The test used information received from claimant's mother. Claimant scores were as follows: communication 94 (adequate range); daily living skills 75 (moderately low range); socialization 86 (adequate range); and motor skills 85 (moderately low range). Dr. Laptosky reported that claimant presented as a "socially

responsive child;" he demonstrated pro-social behavior, pride in accomplishments, and would imitate the behavior of others; and his play was not repetitive. Dr. Stacy opined that this is atypical of ASD. For regional center purposes these behaviors did not show a substantial deficit as required by Title 17.

14. A school evaluation conducted in December 2017 reflected no deficiency in claimant's adaptive functioning. On the Adaptive Behavior Evaluation Scale Revised 2nd Edition, claimant's parents and his teachers each provided a score for him. In the conceptual domain, parents scored 97 and school 81; and in the social domain, parents scored 105 and school 76. There was little agreement between claimant's parents and his teacher's responses; teachers scored him in the average range and parents rated his behavior higher, or worse, than the school. The school reported: "Claimant does not evidence any significant delays in his overall adaptive skills development." In the Autism Spectrum Rating Scales for ages 6-18, a test used as a screening tool to detect ASD or other disorders, with less than 40 being a low score and 70+, being a very elevated score, claimant's scores were as follows: social/communication, parents 84, school 56; social/emotion/reciprocity parents 81; school 53. Again, claimant's parents scored his behavior higher than the school.

15. Steven Mott, M.D. a Developmental Cognitive Neurologist, evaluated claimant. In his August 27, 2019 report, he reported a primary diagnosis of autism, "requiring support (Level I)." Dr. Stacy wrote that there are three levels of autism: level one is high-functioning and level 3 is severe autism. Dr. Mott tested claimant again on November 27, 2019, and he reported autism as last a list of six diagnoses for claimant.

## **DR. STACY'S NOVEMBER 27, 2019, ASSESSMENT**

16. Dr. Stacy conducted a psychological assessment on November 27, 2019, which included the administration of four tests. Her initial impression was claimant had a high level of activity; cooperative if he was asked to do something he wanted to do; but he would refuse if it was something he did not want to do.

The Kaufman Brief Intelligence Test Second Edition (KBIT2) was administered to obtain an estimate of claimant's current level of cognitive functioning. Claimant's verbal score was within the average range, his non-verbal score was within the above average range, and his IQ composite score was 115, within the above average range. Overall, his cognitive skills were in the above average range of intellectual functioning.

The Autism Diagnostic Observation, Second Edition (ADOS-2), Model 3 is a comprehensive assessment used to elicit social interactions and communication behaviors crucial for diagnosing a disorder on the autism spectrum. An overall total score of 7 or above is suggestive of ASD; claimant's overall total score of 5 was within the non-spectrum range, suggesting he does not have ASD.

The Childhood Autism Rating Scale, Second Edition, High Functioning (CARS2-HF) is a behavioral rating scale which distinguishes behaviors associated with ASD from behaviors associated with developmental delays, and uses information provided by caregivers, as well as direct observation of the examiner. Claimant's mother provided the information. A score of 28 or above is suggestive of ASD; claimant attained a score of 25.5, which Dr. Stacy stated is within the range of minimal to no symptoms of ASD, again suggesting claimant does not have ASD.

The Adaptive Behavior Assessment System, Third Edition (ABAS-3), was administered to obtain estimates of claimant's current developmental levels in various

areas of adaptive functioning. This test is subject to over-reporting or under-reporting by respondents and is based on their perception of the individual. Based on his mother's reporting, claimant's adaptive skills are within the average range of adaptive functioning, indicating no substantial deficits and atypical for ASD.

Claimant's speech was understood, it was not odd or repetitive, and the conversation flowed. Nonverbally, he did a lot of pointing and nodded his head, and used descriptive gestures. He exhibited good eye contact, participated in reciprocal social interactions with the examiner, and showed empathy awareness. Claimant's mother noted that his behavior started to get better and then the bottom dropped out. She said that his behavior can be worse when his father is getting ready to deploy and when his father returns home from deployment. Per Dr. Stacy, "this is not something observed with ASD."

17. Summarizing her findings, Dr. Stacy reported that: the KBIT2 test reflected that claimant's cognitive skills are within the above average range of intellectual functioning. The ADOS-2 test scores fell with the non-spectrum range, suggesting claimant does not have ASD. The CARS2-HF scores fell within the range of minimal to no symptoms of ASD. The ABAS-3 reflected that claimant's adaptive skills are within the average range of adaptive functioning. Claimant does not have a substantial deficit in adaptive functioning, as defined in Welfare and Institutions Code, section 4512, and California Code of Regulations, Title 17, section 54000.

A diagnosis of intellectual disability may be appropriate when an individual demonstrates deficits in intellectual functioning with concurrent deficits in adaptive functioning. Claimant's cognitive skills are within the above average range; he does not meet criteria for a diagnosis of intellectual disability. Claimant does not meet criteria for "fifth category eligibility," as his cognitive skills are within the above

average range, and he does not have a disabling condition similar to intellectual disability or one that requires treatment similar to that for individuals with intellectual disability.

18. Dr. Stacy advised that information gathered from claimant's mother suggests that claimant may have Attention Deficit/Hyperactivity Disorder (ADHD). He also has characteristics of anxiety and Disruptive Mood Dysregulation Disorder. Each of these disorders can impact claimant's social and adaptive skills, and his ability to function successfully in new situations or situations that require flexibility. Dr. Stacy recommends mental health/behavioral health to address the ADHD, rule out or address the anxiety and Disruptive Mood Dysregulation Disorder, and address other behavioral concerns including aggression and self-injurious behavior. She also recommends occupational therapy to improve fine motor and sensory processing skills.

## **LEGAL CONCLUSION**

### **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 of proof is a preponderance of the evidence. (Evid. Code, § 115.)

### **Applicable Statutes**

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

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.

4. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

"Developmental disability" means a disability which originates before an individual attains age 18, 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 mental retardation, cerebral palsy, epilepsy, and autism.

This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. Welfare and Institutions Code section 4512 (l)(1) defines "substantial disability" as:

" . . . 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."

6. California Code of Regulations, title 17, section 54000 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 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.

## **Appellate Authority**

7. The purpose of the Lanterman Act is 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." (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

8. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to "assist persons with developmental disabilities and their families

in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

## **Evaluation**

9. The information contained in claimant’s records reviewed by IRC, as well as Dr. Stacy’s evaluation of claimant, did not show by a preponderance of the evidence that claimant suffers from a qualifying developmental disability, including ASD. The evidence presented by IRC established that claimant does not have a condition that makes him eligible for regional center services. Claimant failed to appear and present any evidence to support his contention that he is eligible for regional center services. Therefore, claimant failed to meet his burden of proof to establish that he is eligible to receive services under the Lanterman Act.

## **ORDER**

Claimant’s appeal from IRC’s determination that he is not eligible for regional center services is denied.

DATE: September 9, 2020

MARION J. VOMHOF

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.