

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2020020982**

**DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on July 9, 2020.

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

Claimant represented himself with the assistance of his mother.

The record was closed and the matter submitted for decision on July 9, 2020.

**ISSUE**

Is claimant eligible for regional center services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **FACTUAL FINDINGS**

### **Background**

1. On January 22, 2020, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant, a 41-year-old man, that he was not eligible for regional center services.

2. On January 29, 2020, IRC sent claimant a Notice of Proposed Action stating that its eligibility team found that claimant did not have a "substantial disability" as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

3. On February 12, 2020, claimant filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, claimant contends he is eligible for regional center services under the categories of autism and/or intellectual disability.

4. Following an informal meeting held on March 3, 2020, between the parties, IRC adhered to its determination that claimant was not eligible for regional center services. This hearing followed.

### **Diagnostic Criteria for Autism**

5. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism spectrum disorder (ASD). 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 ASD to qualify for regional center services based on autism.

## **Diagnostic Criteria for Intellectual Disability**

6. The DSM-5 also identifies criteria for the diagnosis of intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65 to 75 range. The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers.

## **Evidence Presented at Hearing**

7. Sandra Brooks, Ph.D., is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology in 2006 from Loma Linda University. She also has a

Bachelor of Arts in English and psychology and a Master of Science in experimental psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Prior to that, she served as a psychological assistant at IRC from 2007 to 2009. Prior to that, she served in multiple positions across the country. She has been involved with many professional presentations in the field of psychology, and attended countless trainings and workshops in her field. Dr. Brooks is an expert in the field of psychology, as it relates to the diagnosis of autism under the DSM-5 and the Lanterman Act. Dr. Brooks testified at hearing concerning her review of records pertaining to claimant. The following is a summary of her testimony and records reviewed.

8. In July 2007, when claimant was 28 years old, he underwent a neuropsychological/psychological assessment at Loma Linda University, in order to assess his cognitive functioning. Claimant was administered the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III), the Wechsler Individual Achievement Test – Second Edition (WIAT-II), the Millon Clinical Multiaxial Inventory – Third Edition (MCMI-III), the Personal Assessment Inventory (PAI), and the Luria Complex Motor Tasks Assessment.

On the WAIS-III, claimant registered a full scale IQ of 88, in the low average range. The WIAT-II tests school performance, which claimant scored a 95 overall (35th percentile) in the low average range. Dr. Brooks noted there was substantial variability in the scores but his overall IQ was in the average. Based on these results, Dr. Brooks testified that claimant would clearly not qualify for IRC services based on an intellectual disability.

Following a clinical interview, the report indicated that while claimant is introverted and avoids meeting new people, he interacts with others in a manner that is evident in individuals that have traits of schizoid personality. Dr. Brooks testified that under DSM-5, schizoid personality disorder is differentiated from ASD, based on ASD having greater impairment of social interactions and repetitive and stereotyped behaviors. People with ASD also frequently have sensory issues, which is not present in schizoid personality disorder. Finally, ASD is a developmental disorder such that the symptoms are present during early childhood. Schizoid personality disorder is typically diagnosed during adulthood. Schizoid personality disorder is a psychiatric condition that does not confer regional center eligibility.

9. A March 1, 2018, letter from Aurora Family Counseling Center stated that claimant was being seen for psychotherapy with diagnosis of pervasive developmental disorder, unspecified and anxiety disorder, unspecified. Dr. Brooks testified that pervasive developmental disorder is no longer a diagnosis contained in DSM-5. Although the evaluator's identity was not indicated, it appeared to be prepared by some type of therapist, who generally is not qualified to diagnosis psychological conditions.

10. Claimant was assessed in May 2019 by University of California, Riverside, Behavioral Health Department and was referred for psychiatric treatment. He has been seen multiple times since. He presented with a history of depression and anxiety. Claimant was also diagnosed with major depressive disorder and unspecified anxiety disorder. Claimant was prescribed several psychotropic medications. Medical records indicated that he previously received a diagnosis of schizoid personality disorder by different evaluators.

11. A March 6, 2020, letter from a Licensed Marriage and Family Therapist at Aurora Family Counseling Center indicated that claimant has been in psychotherapy since 2015. She wrote that although claimant has superior intellect, he has rigid thinking, lacks self-confidence, and has limitations in executive functioning, organization, follow-through, making plans, asking for help, and personal hygiene. The therapist believed that claimant's ability to obtain full-time employment is impaired, and he would benefit from occupational therapy.

12. Based on these documents, Dr. Brooks agreed with the multidisciplinary team's conclusion that claimant is not eligible for regional center services.

13. Claimant and claimant's mother testified that they just want to get claimant the help that he needs. Claimant began having problems in grade school interacting with others. Claimant's mother testified that claimant's teachers were concerned about claimant and wanted to get him help, but claimant's father refused at the time. Claimant testified he had difficulty concentrating in a crowded classroom. He was socially isolated, which concerned his teachers. Claimant believes he would benefit from regional center services.

## **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 proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

## Relevant Law and Regulations

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman 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.

3. 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.)

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" 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>1</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

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<sup>1</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.



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 intellectual disability, 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 intellectual disability."

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. Upon an application for services, the regional center is charged with determining if an individual meets the definition of developmental disability contained in Welfare and Institutions Code section 4512. In this assessment, "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." (Welf. § Inst. Code, § 4643, subd. (b); Cal. Code Regs., tit. 17, § 54010.)

8. Welfare and Institutions Code section 4642 requires a regional center to perform "initial intake and assessment services" for "any person believed to have a developmental disability." Intake shall also include a decision to provide assessment but does not require an assessment. (*Id.* at subd. (a)(2).)

## **Evaluation**

9. While claimant has certain psychiatric conditions that impact his daily life, he failed to establish that he qualifies for regional center services. The only expert who testified was Dr. Brooks. Based on the records provided, Dr. Brooks's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for intellectual disability or ASD. Moreover, nothing in any records showed claimant is substantially disabled within the meaning of the applicable law. While it is certainly

understandable that claimant is exhausting all available avenues to assist him, based on the records provided, a preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category.

## **ORDER**

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

DATE: July 22, 2020

ADAM L. BERG

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.