

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER, Service Agency.**

**OAH No. 2020030120**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 21, 2020.<sup>1</sup>

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<sup>1</sup> In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20 and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in-place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

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

Claimant's mother represented claimant.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 21, 2020.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act under the categories of autism spectrum disorder (autism), intellectual disability, or a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability (fifth category)?

## **FACTUAL FINDINGS**

### **Background**

1. On January 29, 2020, 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 that claimant, a 15-year-old boy, 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.

2. On February 3, 2020, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination. Following a telephonic meeting between the parties on March 25, 2020, IRC adhered to their determination. This hearing ensued.

### **Diagnostic Criteria for Autism**

3. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. 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**

4. The 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 an intellectual disability typically have intelligent quotient (IQ) scores in the 65 to 75 range.

## **Diagnostic Criteria for Fifth category**

5. Under the fifth category, the Lanterman Act provides assistance to individuals with a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (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.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

### **FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY**

A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person’s IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the

cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

### **TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY**

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

## **SUBSTANTIAL DISABILITY**

The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

### **Evidence Presented by IRC**

6. No evidence was presented, and claimant's mother did not claim, that claimant qualifies for regional center services under the categories of cerebral palsy or epilepsy.

7. Holly Miller, Psy.D., is a staff psychologist at Inland Regional Center. She obtained her Doctor of Psychology in 2009, and already held a Master of Science in psychology and Bachelor of Arts in psychology. Dr. Miller has served in a variety of positions, including clinical supervisor where she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals, and has won awards in her field. Dr. Miller also has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Miller is an expert in the areas of autism, intellectual disability, fifth category, and in the evaluation of records to determine eligibility for regional center services under the Lanterman Act.

8. Dr. Miller reviewed the following documents: Individualized Education Program (IEP) plan dated January 10, 2018; Desert Sands Unified School District Triennial Psychoeducational Evaluation dated January 10, 2019; Comprehensive Neuropsychological/Academic Assessment Independent Educational Evaluation dated April 11, 2019, and June 1, 2019; Speech and Language Evaluation dated September 14, 2019; Abramson Audiology Assessment dated December 9, 2019; IEP dated January 8, 2020; and an Educational Occupational Therapy Report dated January 20, 2020.

9. The following is a summary of Dr. Miller's testimony and the documents reviewed:

### **JANUARY 10, 2018, IEP**

According to claimant's January 10, 2018, IEP, he receives special education services under the categories of specific learning disability and speech and language impairment. Claimant's learning disability is attributed to auditory processing deficits as opposed to a developmental disability. Neither of those categories qualifies a person for regional center services under the Lanterman Act.

### **DESERT SANDS UNIFIED SCHOOL DISTRICT TRIENNIAL PSYCHOEDUCATIONAL EVALUATION DATED JANUARY 10, 2019**

According to the Desert Sands Unified School District Triennial Psychoeducational Evaluation dated January 10, 2019, there is no evidence of autism. Rather, the report notes again that claimant has a speech and language impairment and specific learning disability. Claimant's cognitive scores on the assessments administered were, overall, within the average range and what would be expected in someone of claimant's age at the time of the assessment. On the visual motor integration test, as measured by the Visual Motor Integration Test – Sixth Edition,

claimant's scores placed him in the average range with no deficits. Regarding claimant's auditory processing skills, as measured by the Test for Auditory Processing Skills – Fourth Edition, claimant's scores were scattered, and overall placed him in the low average range. Regarding the assessment of claimant's social and emotional functioning, as measured by the Behavior Assessment System for Children – Third Edition, claimant tested predominantly within the average range, and overall, showed adaptive skills "within normal range." Further, claimant indicated he enjoyed school, had friends, and was observed in the school setting to not only be observant and attentive but also social with others in the classroom. On the Wechsler Individual Achievement Test, which measures listening, speaking, reading, writing, and arithmetic skills, claimant's scores ranged from low average to borderline. Claimant was found to have continued eligibility for special education under specific learning disability. Nothing in the report indicated claimant exhibited features of autism or intellectual disability, or substantial deficits that might suggest eligibility for regional center services under the fifth category.

**COMPREHENSIVE NEUROPSYCHOLOGICAL/ACADEMIC ASSESSMENT  
INDEPENDENT EDUCATIONAL EVALUATION DATED APRIL 11, 2019, AND  
JUNE 1, 2019**

Regarding the Comprehensive Neuropsychological/Academic Assessment Independent Educational Evaluation dated April 11, 2019, and June 1, 2019, there was a comprehensive history indicating that claimant had diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Speech and Language Disorder, and Generalized Anxiety Disorder. A battery of tests were administered, which included the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5); the Wide Range Assessment of Memory and Learning – Second Edition (WRAML-2); the Wisconsin Card Sorting Test;

the Conners' Continuous Performance Test (Third Edition) (CCPT-3); the Woodcock Johnson Test of Oral Language – Fourth Edition (WJ-4); the Woodcock Johnson Test of Achievement (WJTA); the Test of Auditory Processing – Third Edition (TAPS-3); the Gray Oral Reading Test – Fifth Edition (GORT-5); the Test of Reading Efficiency – Second Edition (TORE-2); and the Behavior Assessment System for Children, Third Edition (BASC-3).

On the WISC-5, which measured claimant's verbal comprehension skills, visual-spatial skills, fluid reasoning, working memory skills, and processing speed, claimant's scores included low average, average, very low, and extremely low. His visual spatial skills were the best. Claimant's full scale IQ was 77. An IQ at that level is above what would normally be considered intellectually disabled. Scattered scores such as this also do not show a person is intellectually disabled; rather, intellectual disability is typically characterized by global deficits across all domains.

On the WRAML-2, a standardized instrument that measures a person's immediate and delayed memory ability, claimant's scores across 14 testing areas included scores in the average range, low average range, significantly low average range, and very significantly below average range. Again, scattered scores such as this are not indicative of intellectual disability, autism, or fifth category.

On the Wisconsin Card Sorting Test, which measures spontaneous problem solving abilities and how claimant can solve novel cognitive problems, claimant scored within the average range indicating an age-level ability to solve problems.

On the CCPT-3, which is a visual attention test in that it measures a person's ability to sustain visual attention over a period of time, claimant's response pattern indicated strong patterns of impulsivity and inattention. Although not solely indicative

of ADHD, claimant's response pattern on this test is a strong indicator that he suffers from ADHD.

On the WJ-4, which measures oral language comprehension, oral expression ability, phonetic coding, speed of lexical access, vocabulary and auditory memory span, claimant's scores were again scattered among the low average range, significantly low average range, and below average range. On the WJTA-4, claimant's scores were similarly scattered among the low average range, significantly low average range, below average range, and very significantly below average range.

On the TAPS-3, which measures auditory processing skills, claimant scores revealed an age-appropriate processing response.

On the GORT-5, which assessed claimant's oral reading fluency, accuracy, comprehension, and reading rate, claimant showed an overall weakness in processing speed/rate (below average), but in the low average range of comprehension, fluency, and accuracy.

On the TORE-2, a test of word identification, claimant showed weaknesses in phonological processing skills and below average performance in sight-word identification.

The BASC-3 is a rating scale that measures adaptive skills in 20 areas. The rating scale was provided to claimant to assess himself, as well as to claimant's mother and teacher. Claimant rated himself within the average range in all 20 areas. Claimant's mother rated claimant in the average range in all areas, but at risk in functional communication and attention. Claimant's teacher rated him in the average range in all areas, except in the area of learning, where she placed him at risk.

Overall, the assessment indicated claimant's cognitive abilities vary widely, and are affected mostly by his ADHD and possibly obsessive compulsive disorder. Claimant displays strengths and weaknesses and with the appropriate interventions can reach his full academic and adaptive potential. Claimant was diagnosed with ADHD, predominantly inattentive presentation – moderate; specific learning disorder in certain areas of reading, writing and mathematics; and generalized anxiety disorder – with prominent obsessive compulsive features. None of these conditions qualify a person for regional center services. Nothing in Comprehensive Neuropsychological/Academic Assessment showed intellectual disability or autism, or adaptive skills so low that claimant would meet eligibility criteria for regional center services under the fifth category.

**ABRAMSON AUDIOLOGY ASSESSMENT DATED DECEMBER 9, 2019, AND CLAIMANT'S JANUARY 8, 2020, IEP**

Regarding the Abramson Audiology Assessment dated December 9, 2019, the report noted claimant suffered from significant language deficits and should have continued eligibility for special education under the category of speech and language impairment. Claimant's IEP dated January 8, 2020, completed shortly after the Abramson assessment, reflected eligibility for special education under the categories of specific learning disability and speech and language impairment. Further, the IEP showed claimant is friendly and smart, achieved communication goals, understood language, and showed no concerns with articulation, voice, or influence, he was able to easily engage with the listener, and used complete sentences. It also noted claimant has a girlfriend, has friends, is polite with teachers and does what he is told. All indications were that claimant showed age-appropriate social behavior and that he is on track to graduate normally with his peers.

## **EDUCATIONAL OCCUPATIONAL THERAPY REPORT DATED JANUARY 20, 2020**

The Educational Occupational Therapy Report dated January 20, 2020, noted the following:

[Claimant] is a friendly, cooperative, and talkative boy with interest in attending college and pursuing a career. He has the diagnoses of Attention Deficit Disorder (ADD), auditory processing disorder, generalized anxiety, and mixed expressive-receptive language delay. He has made consistent progress during his school career and engages in age-appropriate social activities.

Thus, there was no concern with claimant's adaptive skills. Moreover, on the BASC-3, claimant's teacher's ratings showed:

[Claimant] displays age-appropriate adaptive skills within the school setting however he shows continued needs in the area of cognitive regulation as part of executive functions. He has difficulty initiating tasks, staying on task, and monitoring his performance on tasks.

### **DR. MILLER'S CONCLUSION**

10. The above-referenced records do not indicate claimant meets the diagnostic criteria for autism or intellectual disability under the DSM-5, or that claimant has a condition similar to or that requires treatment similar to a person with an intellectual disability. Claimant's overall performance scores from all the cognitive and testing showed he functions primarily average to low average range, does not

have global or significant deficits across all areas, and does not have the significant adaptive deficits necessary for qualification under the fifth category.

Claimant's intellectual ability and potential are much higher than a child with an intellectual disability. Claimant's deficits are very specific. His weaknesses are attributed to the learning disability and speech and language impairment, not intellectual disability or autism. Claimant's testing shows he is significantly below average because of the learning disorder and language disorder, as well as ADHD, and not because of a developmental disability.

Claimant therefore does not qualify for regional center services.

### **Claimant's Mother's Testimony**

11. Claimant's mother said she wanted to make sure she gets all the help he needs. She knows her son has learning challenges and cognitive challenges. She has been able to obtain special education services for her son in school, but does not understand why she could not obtain an assessment from IRC. She would like to know what other tests should be done so she can do all that is possible to help her son.

## **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 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” 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.

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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.

(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 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. 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.)

## Conclusion

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Miller. Based on the records provided, Dr. Miller's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism or intellectual disability, and similarly did not qualify under the fifth category. The documents presented in this matter support Dr. Miller's conclusion. Although claimant does appear to have some challenges, overall, he has both strengths and weaknesses scattered across various areas which are not indicative of a developmental disability. Rather, such challenges are more indicative of a learning disability. Claimant similarly does not display global deficits, which would be expected in a person who has a DSM-5 diagnosis of intellectual disability.

With respect to autism, nowhere in any of the documents did it indicate there has been a suspicion of autism, nor were any of the following features of autism present: 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. Claimant's January 8, 2020, IEP also showed claimant is friendly, smart, easily engages with people, has a girlfriend, has friends, is polite with teachers, does what he is told, and exhibits age-appropriate social behavior. None of these behaviors are consistent with a DSM-5 diagnosis of autism.

Moreover, nothing in any records showed claimant is substantially disabled in three or more areas of major life activity within the meaning of applicable law, or that

he has substantial adaptive deficits that would render him eligible for regional center services under the fifth category. His intellectual ability places him above the cognitive level of functioning to be considered intellectually disabled. There was insufficient evidence to show claimant has a disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability.

Accordingly, claimant is not eligible for regional center services.

### **ORDER**

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services is denied. Claimant does not have 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 (fifth category).

DATE: July 31, 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.