

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2020030466

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 20, 2020, pursuant to OAH's April 10, 2020, Order which converted this matter from an in-person hearing to a telephonic hearing in light of the Governor's proclamation of a State of Emergency and Executive Order N-25-20 arising out of the COVID-19 pandemic.

Claimant's mother represented claimant.

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

After the hearing, the record was left open to allow claimant to submit additional materials and for IRC to be able to respond. Claimant submitted a number of documents, detailed below, which have been marked and made part of the record. IRC, in turn, submitted a response to this evidence and a report completed by its multi-disciplinary team which has also been marked and made part of the record. On June 5, 2020, the record was closed and the matter submitted for decision.

SUMMARY

IRC seeks to terminate claimant's eligibility for regional center services based on its conclusion that claimant does not have a qualifying condition that makes him eligible for regional center services and that its prior decision to find him eligible is "clearly erroneous." IRC failed to prove by a preponderance of the evidence that its prior decision that claimant met the diagnostic criteria for intellectual disability and autism spectrum disorder is "clearly erroneous." Accordingly, claimant's appeal is granted and claimant remains eligible for regional center services.

ISSUES

Is the previous determination that claimant was eligible for regional center services under the Lanterman Act Developmental Disabilities Services Act (Lanterman Act) on the basis of intellectual disability or autism "clearly erroneous?"

Is claimant eligible for regional center services under the Lanterman Act because of 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. Claimant is a 10-year-old male who was deemed eligible for regional center services under the intellectual disability and autism spectrum disorder (ASD) categories effective October 9, 2012. This conclusion was based on the assessment of clinical psychologist Edward B. Pflaumer, Ph.D., as documented in a report he prepared dated October 9, 2012.

2. Claimant lives in the family home with his parents and brothers and receives Supplemental Security Income; California Children's Services through San Bernardino County; 236 hours of In Home Supportive Services (IHSS) per month, including 168 hours of Protective Supervision. Claimant was receiving 43 hours per week of 1:1 Applied Behavioral Analysis (ABA) through Sunny Days plus 8 hours of supervision. Claimant stopped participating in this program on September 23, 2019, but he is now receiving ABA therapy through Easterseals. Claimant requires ABA services because, as documented in his July 11, 2019, Individual Program Plan (IPP), claimant engages in problem behaviors that include self-harm, tantrums, destruction of property, and efforts to elope. Respondent is in the fifth grade and has an Individualized Education Plan (IEP) in place. His primary qualifying diagnosis for special education services is autism.

3. On January 14, 2020, IRC served claimant with a Notice of Proposed Action with an attached letter indicating that IRC determined that claimant was no longer eligible for regional center services, effective February 15, 2020, based on its reassessment of claimant. IRC stated that it has concluded that claimant does not have autism, epilepsy, an intellectual disability, or a condition that is closely related to

intellectual disability or requires treatment similar to the kinds of treatment required for people with an intellectual disability. IRC further stated it concluded that respondent is not substantially disabled as a result of any of these conditions.

4. In a fair hearing request dated March 2, 2020, which IRC received on March 3, 2020, claimant strongly took issue with IRC's assessment and requested a hearing, asking that claimant's eligibility for regional center services be "reinstated."

5. On April 10, 2020, the hearing was held, as noted, telephonically. The record was left open for the parties to submit the following documents: an IHSS Program Healthcare certification from claimant's neurologist dated September 17, 2019, an After Visit Summary from claimant's neurologist dated October 3, 2019, a letter from claimant's education facilitator at the school he attends, an Easterseals Report and Assessment, and a letter from claimant's pediatrician regarding his diagnosis of autism. These materials have been marked and made part of the record.¹

IRC was asked to provide, in turn, a report from claimant's neurologist dated August 5, 2019, that it had received from claimant, which was also marked and received into evidence. In addition, IRC submitted a response to claimant's evidence dated June 5, 2020, and a report from its multi-disciplinary team. These materials also have been marked and made part of the record.

¹ To protect claimant's confidentiality, the names of providers and educators are not referenced in this decision.

Diagnostic Criteria for Autism Spectrum Disorder

6. Official notice was taken of excerpts from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which Ruth Stacy, Psy.D., IRC's expert, referenced during her testimony, which is summarized below. The *DSM-5* provides the diagnostic criteria used by psychologists and medical doctors to diagnose autism spectrum disorder, which is one of the qualifying conditions for regional center services. To be eligible for regional center services based on autism spectrum disorder, a claimant must meet the diagnostic criteria for that disorder that are set forth in the *DSM-5*.

7. Under the *DSM-5*, the criteria necessary to support a diagnosis of autism spectrum disorder include: persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive 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 current functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

Diagnostic Criteria for Intellectual Disability

8. Official notice is also taken of diagnostic criteria in the *DSM-5* used for intellectual disability. 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. In order to have a *DSM-5* diagnosis of intellectual disability, three diagnostic criteria must be met.

First, deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing must be present. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

Second, deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility, must be present. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

Third, the onset of the cognitive and adaptive deficits must occur during the developmental period.

Diagnostic Criteria for Fifth Category

9. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling conditions 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." (Welf. & Inst. Code, § 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.

In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the court of appeal held that the fifth category condition must be very similar to

intellectual disability, with many of the same, or close to the same, factors required in classifying a person as intellectually disabled. Another appellate decision has also suggested, when considering whether an individual is eligible for regional center services under the fifth category, that eligibility may be based largely on the established need for treatment similar to that provided for individuals with an intellectual disability, notwithstanding an individual's relatively high level of intellectual functioning. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.) In *Samantha C.*, the individual applying for regional center services did not meet the criteria for intellectual disability. The court understood and noted that the Association of Regional Center Agencies had guidelines (ARCA Guidelines) which recommended consideration of fifth category for those individuals whose "general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)." (*Id.* at p. 1477.) However, the court confirmed that individuals may qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with intellectual disability.

Report of Edward B. Pflaumer, Psy.D.

10. As noted, IRC deemed claimant eligible for regional center services under diagnoses of intellectual disability and autism based on Dr. Pflaumer's October 9, 2012 evaluation of claimant. Dr. Pflaumer utilized the following psychological testing measures for claimant and reviewed the following information: Expressive Vocabulary Test (EVT) (attempted), Peabody Picture Vocabulary Test-III (PPVT-111) (attempted), Vineland Adaptive Behavior Scales, Autism Diagnostic Observation Schedule-Module 1 (ADOS), and Childhood Autism Rating Scale (CARS). In addition, Dr. Pflaumer reviewed

available records and conducted a diagnostic interview of claimant and interviewed his family.

In reaching the conclusion that claimant meets the DSM criteria for autism, Dr. Pflaumer cited the major symptom areas associated with autism: impairment in socialization, impairment in communication, and repetitive/ritualistic behavior. Dr. Pflaumer stated that claimant met all three of these criteria: he related only to a few selected individuals; he communicated with very few words; and he expressed frustration when he was unable to get his message across. Finally, Dr. Pflaumer noted claimant displayed both ritualistic, as well as, repetitive behavior. Claimant's repetitive behavior included head banging, knocking furniture over and jumping from high places.

11. Claimant's scores on the ADOS and the CARS substantiated Dr. Pflaumer's autism diagnosis. Under the ADOS claimant's communication and social interaction rating was "13" with "12" being the autism cutoff. Under the CARS assessment, claimant was evaluated in 15 specific categories. Dr. Pflaumer rated claimant with a "Raw Score" of 41.5. Per CARS "severe autism" has a rating above 37. Based on his evaluation of claimant Dr. Pflaumer made the diagnostic impression, under Axis I, that claimant has an "Autistic Disorder" and under Axis II, "Mild Mental Retardation". The basis of his "Mental Retardation" diagnosis, however, is not clear and appears to lack foundation. Dr. Pflaumer stated only that "Anecdotes as well as test scores confirm that [claimant] is slow enough so that mild retardation can be applied."

Dr. Pflaumer recommended that claimant be considered for regional center services. IRC found claimant eligible under the autism and intellectual disability (mild) categories.

Testimony of Ruth Stacy, Psy.D.

12. Ruth Stacy, Psy.D, a licensed clinical psychologist, testified in this matter. A report she prepared was admitted and her testimony was consistent with her report. Dr. Stacy holds master's degrees in sociology and in counseling psychology. In 2008, she completed a doctorate degree in psychology at Trinity College of Graduate Studies in Anaheim, California.

Dr. Stacy was part of the IRC multidisciplinary team that evaluated claimant to assess his current level of functioning and to determine his continuing eligibility for regional center services. In this regard, Dr. Stacy administered the following psychological assessments of claimant: The Weschler Scale of Intelligence for Children, Fifth Edition (WISC V), the ADOS-2 (Module 3), CARS2-HF, High Functioning Version, and the Adaptive Behavior Assessment System (ABAS). She also interviewed claimant's mother and stepfather, she observed claimant and she interacted with him.

13. Dr. Stacy, in addition, reviewed Dr. Pflaumer's October 10, 2012, assessment of claimant, a January 18, 2013, Language and Speech Assessment of claimant from his school district, which found him eligible for speech-language therapy and a January 23, 2013, Multidisciplinary Assessment of claimant from the school district. Per this assessment, claimant qualified for special education services under "Autistic-like Behaviors" based on his rating scale of 117 under the Gilliam Autism Rating Scale III, which indicated "Very Likely Probability of Autism". In her testimony, Dr. Stacy discounted this assessment because it was based on one person's "perception" of claimant.

14. Dr. Stacy also reviewed the January 17, 2018, Psychoeducational Triennial Assessment from claimant's other school district. This assessment concluded that, per

the Autism Spectrum Rating Scale, which claimant's mother completed, claimant had a rating scale score of 82, which fell within the very elevated range. Per this same assessment as completed by claimant's general education teacher, however, claimant had a rating scale score of 56, which was in the average range. Similarly, claimant's rating scale score as completed by another teacher was 52, which was also within the average range. The Psychoeducational Triennial Assessment concluded that claimant qualified for special education services under the autism category. Regarding his intellectual functioning, as measured by the Kauffman Brief Intelligence Test, which was administered to him as part of this triennial assessment, claimant fell within the average range of intelligence. Per the Woodcock-Johnson IV Tests of Achievement, claimant's scores ranged from the average to the high average range. Regarding expressive language skills, claimant's speech was clear and intelligible and he was able to communicate his wants and needs in the school setting with school staff and peers.

15. In terms of the tests Dr. Stacy administered to claimant, claimant's rating under the ADOS-2 she administered was "4" with subtotal scores of "3" for Social Affect, and "1" for Restricted and Repetitive Behaviors. The "4" rating indicated minimal to no evidence of autism spectrum disorder and a non-spectrum classification.

The rating under the CARS2-HF assessment Dr. Stacy administered was 25, which indicated "Minimal to No Symptoms" of autism spectrum disorder.

16. Claimant's overall cognitive skills per the WISC-V Dr. Stacy administered were within the average range. Claimant's Verbal Comprehension, Visual Spatial, and Working Memory were within the average range. Claimant's Fluid Reasoning Index range was within the high average range. His prorated Full Scale IQ and the General Ability Index were found within the average range.

17. Claimant's functional academic skills, as measured by the ABAS Dr. Stacy administered, were within the extremely low range in the areas of General Adaptive Composite, Conceptual, Social and Practical. This test measured claimant's developmental levels in various levels of adaptive functioning. Dr. Stacy noted this range was based on claimant's mother's reporting and she dismissed the results. She stated that the results were inconsistent with the results from the WISC-V test she administered and the results from claimant's his November 7, 2018, school testing, which showed his academic skills to be within the average to high average range. She felt these scores represented an "underestimation" of claimant's true adaptive skills.

18. Dr. Stacy concluded that claimant does not meet the *DSM-5* criteria for an autism spectrum disorder diagnosis based on the results from the CARS2-HF and ADOS-2 results. Claimant also does not have an intellectual disability because claimant's cognitive skills were found to be within the average range. Because his cognitive skills were within the average range, claimant does not have a disabling condition closely related to intellectual disability or that requires treatment similar to what persons with intellectual disability require.

19. For her diagnostic impression of claimant, Dr. Stacy assessed claimant with attention-deficit/hyperactivity disorder and intermittent explosive disorder. She further found that the initial determination that claimant was eligible for regional center services is "clearly erroneous" for two reasons: First, claimant clearly does not have intellectual disability. She noted that Dr. Pflaumer did not have claimant undergo intellectual testing and she noted the school district did not qualify him for services based on an intellectual disability. Moreover, claimant's cognitive skills were "solidly within the average range."

20. As to whether claimant meets the diagnostic criteria for autism spectrum disorder, Dr. Stacy agreed that claimant has had “behavioral issues,” which Dr. Pflaumer noted in his report and which claimant’s mother reported at claimant’s July 19, 2019, IPP. However, during Dr. Stacy’s interaction with claimant, he was able to express and communicate his needs, and engaged with unfamiliar people during Dr. Stacy’s assessment of him. He further did not exhibit any unusual or repetitive hand or finger movements or complex mannerisms or odd stereotyped or complex body movements. Claimant was tuned into the conversation she had with his parents and, as she put it in her report “exhibited a level of social awareness typically not seen in individuals who have autism spectrum disorder.”

21. But, her conclusion that claimant does not meet the autism spectrum disorder *DSM-5* criteria is suspect because she seemed to discount, or at the least not incorporate in her evaluation, information claimant’s parents reported to her regarding claimant’s behaviors in terms of whether he meets the *DSM-5* criteria for autism spectrum disorder. Her opinion also conflicts with the opinion of claimant’s treating pediatrician, which is discussed immediately below.

For her conclusion Dr. Stacy seemed to rely only on her own observations of claimant during the single occasion she observed him. In contrast, claimant’s parents see him daily and reported to her that claimant engages in behaviors that meet several “Part A” (“Persistent deficits in social communication and social interaction . . .”) and “Part B” *DSM-5* criteria (“Restricted, repetitive patterns of behavior, interests, or activities . . .”) for autism spectrum disorder. His parents told Dr. Stacy that claimant has “outbursts/meltdowns” five to six times per week where he clenches his fist, digs his nails into hand, hits others, throws things or bites his lip. He takes other people’s drinks and children’s “juice boxes” without inhibition. He engages better with

teenagers than children his own age. Claimant taps things, hits his head, and taps his foot. He hits himself in the face with his hand every day. He lines things up or stacks them. He picks his nose constantly until his nose bleeds. If his foot hits the line of a square on the ground he has to touch the other square with his foot. Claimant rocks back and forth, especially when he watches a movie. He will watch the same movie repeatedly. They also reported to Dr. Stacy that claimant is bothered by sounds including those made by a train, bus or ambulance. He also, they reported, has to be prepared for changes in his routine.

Letter from Claimant's Treating Pediatrician

22. The record was left open so that claimant could submit documents from different care providers as discussed above. Among the documents claimant provided, claimant submitted a letter from his pediatrician dated May 5, 2020. In his letter, claimant's pediatrician stated that claimant has been diagnosed with autism spectrum disorder since July 5, 2012, based on the *DSM-5* criteria. He noted that this diagnosis was made after a "careful developmental history and physical, interview, chart review, and observations from his physicians and therapists." The pediatrician identified claimant's signs of autism to include speech delay, social withdrawal, sensory disintegration, explosive temper tantrums, and eloping. It was further noted that claimant has accompanying diagnoses of speech delay, sensory integration disorder, anxiety and poor social skills which hamper his ability to learn and interact with others. Claimant is under the care of a behavioral pediatrician, a neurologist and a general pediatrician. His recommended treatment therapy is ABA therapy.

23. Claimant's pediatrician's opinion that claimant meets the diagnostic criteria for autism spectrum disorder is given deference because of his long-standing relationship with claimant as one of his treating physicians. His medical opinion that

claimant meets the diagnostic criteria for autism spectrum disorder is found persuasive. He references specific diagnostic criteria applicable to this diagnosis and indicates that the diagnosis was made after a careful review of claimant's medical records and history. Given the long-standing opportunity he has had to observe and treat claimant, and that he has provided treatment in conjunction with two other physicians who practice specialized medicine that treats autistic children, the pediatrician's opinions are more persuasive than Dr. Stacy's.

Testimony of Claimant's Mother and Materials Submitted Post Hearing

24. Claimant's mother testified that claimant needs "prompts" for self-care, and he does not appreciate dangers around him. She said he "zones out", suggesting that he experiences seizures at such times. She added that he is book smart. Claimant's mother's testimony is supplemented by her reports of claimant's behavior as documented in the Easterseals's Initial ABA Assessment and Recommendation Report, which was received after the hearing as noted above. This assessment was done from October to November 2019. In the report of this assessment, claimant's mother stated that claimant needs prompts for toileting, self-care and dressing, and claimant's mother does not allow him to use utensils due to his lack of attention and difficulties using them. Claimant can communicate using intelligible words but his responses are delayed and he requires clarifying questions to be understood. He has difficulty responding to peers and understanding them. In addition, claimant's mother reported that claimant engages in self-harming behaviors that include hitting his head, and eloping from the area.

25. To substantiate claimant's behavioral problems and support her contention that he may have epilepsy, post-hearing claimant's mother submitted the following documents:

A report from claimant's neurologist dated August 5, 2019. In this report the neurologist assessed claimant with "Epilepsy versus intermittent explosive disorder." He noted that claimant was reported to "stare off" during and after he had outbursts. The neurologist found claimant negative for seizures, however. He prescribed claimant Depakote.

Claimant's neurologist further documented that he assessed claimant's condition in a report he prepared for IHSS dated September 17, 2019, which was also received after the hearing. In this report, he stated claimant's diagnoses as "Epilepsy versus explosive disorder" and "Autism". He in addition stated that claimant is unable to independently perform one or more activities of daily living.²

26. In addition to this information, claimant submitted post-hearing a letter dated March 18, 2020, from the Education Engagement Facilitator at the school claimant attends. This facilitator specializes in ABA therapy and is working with claimant to address his behavioral issues. Based on her observations of claimant, this individual identified the following troubling behaviors: tantrums, aggression, elopement, property destruction, perseverations and rigid behaviors. She stated that

² Claimant also submitted "After Care" summaries which he received after medical visits. These summaries indicate that claimant was seen for medical care and the review of his systems included "Epilepsy vs. Intermittent Explosive Disorder", Autism, ADHD.

the antecedents of claimant's behaviors included: changes in routine, not getting 100 percent on his assignments, not understanding the instructions to an assignment or instructions his parents were giving him, being asked to do chores, transitions, attending to homework for long periods of time, and his brothers bothering him while he was working on schoolwork. When these antecedents occurred, claimant was likely to hit his brothers, hit himself, throw/destroy objects, and run away from the area.

Regional Center's May 11, 2020, Eligibility/Team Review

27. Post-hearing, IRC's eligibility team reviewed the materials claimant submitted and, as documented in a report dated May 11, 2020, concluded that a psychological and medical evaluation is not necessary. The team consisted of Dr. Stacy, Dr. Ahmed (a medical doctor), and an IRC Program Manager/Director. The team maintained that claimant is not eligible for regional center services under the categories of autism spectrum disorder, intellectual disability, fifth category, or epilepsy. In this document, Dr. Ahmed wrote that claimant's neurologist found "no seizure" with an "undetermined diagnosis" of "epilepsy vs. intermittent explosive disorder." The team did not, it is noted, address claimant's pediatrician's opinion that claimant meets the *DSM-5* criteria for autism spectrum disorder.

Evaluation of Evidence

28. Claimant's pediatrician's opinion that claimant meets the *DSM-5* criteria for autism spectrum disorder is found more persuasive than Dr. Stacy's contrary opinion for these reasons: Claimant's treating doctor's opinion is given great weight because he has had the chance to observe claimant over an extended time period, since at least 2012, and he has reviewed claimant's medical records and other information. Based on his extensive review of the information in these records he

found that claimant meets the *DSM-5* ASD criteria. His opinion is, moreover, supported by the record which includes reports of claimant's behaviors which are consistent with the *DSM-5* criteria for ASD. Dr. Stacy on the other hand based her opinion, to a large extent, on her observations of claimant based on the single time she had a chance to interact with him. Further, she seemed to dismiss the reports of claimant's parents, Dr. Plauffmer's opinion, and the observations of the clinician who found that claimant met the autism spectrum disorder criteria in the Gilliam assessment report found in the January 23, 2013, Multidisciplinary Assessment of claimant by the school district. In addition, as an additional reason to credit the pediatrician's autism spectrum disorder diagnosis over Dr. Stacy's, the diagnosis was made for the purpose of treating claimant and he is receiving treatment to ameliorate the behavioral problems related to his autism spectrum disorder condition. Also, the record supports the conclusion that claimant has significant functional limitations in the areas of self-care, self-direction, and expressive and receptive communication as claimant's parents, and his Easterseals' facilitator, have observed and reported.

With this noted, Dr. Stacy's opinion that claimant does not meet the intellectual disability criteria set forth in the *DSM-5* is found persuasive for the reasons she noted above. Claimant's cognitive skills as measured by several cognitive assessment tests were found within the average to high average range. Moreover, Dr. Stacy's opinion that claimant does not meet the fifth category criteria is also found persuasive. Claimant does not have a disabling condition closely related to intellectual disability or to require treatment similar to what persons with intellectual disability need.

Similarly, it cannot be found that claimant has an epilepsy diagnosis that would make him eligible for regional center services under this category. Claimant's neurologist's statement that claimant has "Epilepsy versus intermittent explosive

disorder” and that claimant was “negative” for seizures does not allow for the conclusion that claimant has seizures and/or that he has epilepsy. This conclusion is reached without prejudice to claimant’s right to obtain additional medical information and submit this information to IRC if necessary.

LEGAL CONCLUSIONS

Burden of Proof

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is set forth in the Welfare and Institutions Code section 4500 et. seq.
2. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.
3. In a proceeding to determine whether or not the previous determination that an individual has a developmental disability was erroneous, the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish that its previous eligibility determination was clearly erroneous by a preponderance of the evidence.

Relevant Law and Regulations

4. 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.

5. 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.)

6. 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.*)

7. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation³, 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

³ 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.

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 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 intellectual disability.

8. 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.

9. 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.)

10. Welfare and Institutions Code section 4643.5, subdivision (b), states:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

11. 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).)

Conclusion and Disposition

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Welfare and Institutions Code section 4643.5, subdivision (b), authorizes the regional center to reassess clients to determine if a diagnosis previously made is currently correct. That is to say, the issue is not whether a diagnosis made in the past was correct, it is assumed to be correct; but rather, the issue is: given how the client currently presents, would that diagnosis be given today?

IRC failed to prove by a preponderance of the evidence that its October 9, 2012, eligibility determination under the autism eligibility category is clearly erroneous. For the reasons discussed above, claimant's treating pediatrician has diagnosed claimant with autism spectrum disorder after a careful review of claimant's medical and other information. His conclusion is consistent with Dr. Pflaumer's October 9, 2012, assessment and the assessment of claimant's school district's multi-disciplinary team's conclusion that claimant meets the criteria for autism spectrum disorder based on his performance on the Gilliam assessment. The autism spectrum disorder diagnosis is further supported by the observations of claimant's behaviors made by claimant's parents and his education facilitator which is consistent with applicable "A" and "B" factors for behaviors consistent with an *DSM-5* ASD diagnosis.

13. IRC's October 9, 2012, decision that claimant qualifies for regional center services under the intellectual disability category, however, is clearly erroneous as Dr. Stacy found, for the reasons discussed above. Claimant is, further, not eligible for services under the fifth category. He does not have a condition similar to intellectual disability or that requires treatment similar to what persons with an intellectual disability require.

14. Concerning the question whether claimant has epilepsy for purposes of assessing his eligibility for regional center services, it is not found that claimant has epilepsy. It cannot be concluded that claimant's neurologist has diagnosed claimant with this condition. This conclusion is made without prejudice.

ORDER

Claimant's appeal from Inland Regional Center's determination that he is no longer eligible for regional center services based on autism spectrum disorder is granted. Claimant remains eligible for regional center services under that diagnosis.

Claimant's appeal from Inland Regional Center's determination that he is no longer eligible for regional center services based on intellectual disability is denied. Claimant is no longer eligible for regional center services based on that diagnosis.

Claimant's appeal that he qualifies for regional center services based on a diagnosis of epilepsy is denied without prejudice.

DATE: June 18, 2020

ABRHAM M. LEVY
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.