

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2020040602**

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 8, 2021, by telephone conference due to the COVID-19 pandemic.

Natalie Lowis, Attorney at Law, California Children's Center, represented claimant, who was not present.

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

The record was closed, and the matter submitted for decision on June 8, 2021.

## **ISSUES**

The parties identified the following issues: Should IRC conduct a psychological assessment to determine claimant's regional center eligibility? Is claimant eligible for regional center services under the autism spectrum disorder (autism) category pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **FACTUAL FINDINGS**

### **Background**

1. On March 17, 2020, IRC sent claimant a Notice of Proposed Action stating that IRC had decided that he 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). IRC further determined that no "intake" services could be provided because claimant's records do not show he has a disability that qualifies him for regional center services.

2. On April 6, 2020, claimant's authorized representative filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, claimant contends he is eligible for regional center services under the autism category.

3. Following an informal meeting held on May 4, 2020, between the parties, IRC adhered to its determination that claimant was not eligible for regional center services, and that the records submitted on claimant's behalf do not warrant further testing.

4. Claimant asked to continue the matter three times, which IRC did not oppose. OAH granted claimant's motions to continue the matter on May 22, 2020, October 20, 2020, and March 8, 2021.

### **The Parties' Agreement and Stipulation**

5. At the start of the hearing, the parties indicated that they had entered into an agreement for IRC to conduct an intake and assessment of claimant pursuant to Welfare and Institutions Code section 4642. This assessment would include a psychological evaluation of claimant. IRC would provide claimant with written notice of its decision. Claimant's appeal rights are specifically preserved. The parties agreed to have their agreement and stipulation incorporated in this decision.

## **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; 500.)

### **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 disorders even where social and intellectual functioning

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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.

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."

9. Based on the parties' agreement and stipulation IRC will conduct an intake and assessment of claimant to determine whether he is eligible for regional center services with claimant's right to challenge that decision preserved.

## **ORDER**

Based on the parties' agreement and stipulation IRC will conduct an intake and assessment of claimant pursuant to Welfare and Institutions Code section 4642 that will include a psychological evaluation. IRC will provide claimant with written notice of

its decision with notice to claimant of his appeal rights. Claimant's right to appeal any decision is specifically preserved.

DATE: June 9, 2021

ABRAHAM 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. (Welf. & Inst. Code, § 4712.5, subd. (a).)