

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

**In the Matter of the Eligibility of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2020050508**

**DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on June 24, 2020, pursuant to the June 1, 2020, Amended Order issued by OAH converting the hearing to a telephonic hearing because of concerns arising from the COVID-19 pandemic.

Claimant's mother represented claimant, who was present at the hearing.

Senait Teweldebrhan, Fair Hearings Representative, represented Inland Regional Center (IRC).

The matter was submitted on June 24, 2020.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (ASD)?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a four-year-old boy who meets the eligibility requirements to receive services from IRC under the category of epilepsy. Claimant's mother requests that that claimant also be found eligible for services from IRC under the category of ASD. In a letter dated April 9, 2020, IRC notified claimant that he was not eligible for services under the category of ASD based upon IRC's assessment.

2. In a fair hearing request dated May 6, 2020, claimant's mother appealed IRC's decision and this hearing ensued.

3. In his fair hearing request, claimant stated the following reasons why he is eligible for regional center services:

a [sic] neutral outsider third party psycho [sic] evaluation due to fact now we have been deliberated and targeted. [sic] which [sic] a neutral third party would be positive and adequate to have a proper diagnosis. due [sic] to Inland Regional Center violation of a permanent restraining order and we feel is [sic] a discrimination matter and Inland Regional Center attempting to remove of [sic] all my

children and regional support due to the violation that occurred of the restraining order. Inland Regional Center psychologist(s) all have attempted to plagiarize their evaluation by stating the same results. we [sic] feel a third party evaluation is a more adequate candidate [sic].

4. By letter dated May 28, 2020, IRC provided a summary to claimant of a telephonic informal meeting with claimant's mother held on May 21, 2020. The letter summarized that the issue at hand is whether claimant is eligible for regional center services due to ASD, even though claimant is already eligible for services under the category of epilepsy. The letter noted that claimant had been evaluated at Kaiser by Glenn Miya, M.D., who administered an Autism Diagnostic Observation Schedule-2 (ADOS-2) to claimant who obtained a total score of 9, which is classified in the ASD range. However, there was conflicting evidence in the report. On February 20, 2020, claimant was evaluated at IRC by a staff psychologist, Sandra Brooks, Ph.D., who found that claimant did not meet the diagnostic criteria for ASD and found him to be not eligible for regional center services on the basis of ASD.

### **Diagnostic Criteria for Autism Spectrum Disorder**

5. Official notice was taken of excerpts from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), which was referenced during the hearing and in records submitted as evidence. The DSM-5 identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria 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 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 that is substantially handicapping in order to qualify for regional center services. In order to meet the criteria for “substantially handicapping” the individual must have significant deficits in the categories of: self-care, communication, learning, self-direction, mobility, capacity for economic self-sufficiency and capacity for independent living for those individuals of appropriate age.

## **IRC’s Evidence**

6. Dr. Brooks is employed by IRC as a staff psychologist and has held that position for 13 years. Dr. Brooks received her Ph.D. in Psychology from Loma Linda University in 2006. Her responsibilities at IRC include performing psychological assessments of children and adults to determine whether those individuals are eligible for services at IRC on the basis of a diagnosis of Intellectual Disability, ASD and/or the fifth category.<sup>1</sup> Dr. Brooks’ assessments consist of reviewing available records, administering, scoring, and interpreting test data, as well as drafting reports of her psychological assessments. In her reports, Dr. Brooks submits recommendations regarding her diagnostic conclusions and whether those conclusions conform to the requirements of the Lanterman Developmental Disability Services Act (Lanterman Act) regarding eligibility for services at IRC. Dr. Brooks is part of a team of professionals at IRC who evaluate individuals for eligibility. Dr. Brooks reviewed all of the documents

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<sup>1</sup> The fifth category refers to a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals.

received into evidence, performed a clinical evaluation of claimant on February 20, 2020, and testified at the hearing. The following factual findings are based upon Dr. Brooks's testimony and records review.

7. Specifically, Dr. Brooks reviewed the following documents which were received into evidence: A report from Dr. Anna Declaro from Kaiser dated September 17, 2018, documenting several consultations, and other various dates; Outpatient Child Development Consultation Report from Kaiser dated November 19, 2019; letter dated February 13, 2020, as addendum to the Report dated November 19, 2019, from Kaiser; a Multidisciplinary Evaluation dated February 17, 2020, from San Bernardino County Superintendent of Schools for Desert Mountain Operations; and Desert/Mountain Special Education Local Plan Area (SELPA) Individualized Education Program (IEP) dated February 20, 2020.

8. The report dated September 17, 2018, and other various dates, shows the observations from claimant's primary care physician Dr. Declaro after face-to-face visits with claimant. No formal tests related to ASD were conducted or summarized in this report.

9. The November 19, 2019, Outpatient Child Development Consultation Report from Kaiser was conducted by Dr. Miya and Dr. Declaro, along with a speech therapist and occupational therapist. The purpose of the consultation was to evaluate claimant for a possible diagnosis of ASD. The tests administered for this evaluation and summarized in the report were the Autism Diagnostic Observational Schedule-2 (ADOS-2), Speech-Language Pathology Evaluation, Comprehensive Assessment of Spoken Language Second Edition (CASL-2), and the Pediatric Evaluation of Disability Inventory (PEDI) to assess activities of daily living. Dr. Brooks explained that the PEDI results show that claimant was found to have significant deficits in both self-care and

functioning skills. The report noted that "Due to [claimant's] problems with sensory regulating and processing, his participation and performance in activities of daily living are affected." Dr. Brooks noted that observations of claimant recorded in this report are not consistent with an individual with ASD. Specifically, claimant attempted to get the examiner's attention, claimant's tone was appropriate and his conversations were reciprocal. Claimant enjoyed interacting with the examiner during the ADOS-2 test. These observations are not consistent with a diagnosis of ASD. Instead, many of the observations are consistent with the multiple other diagnoses given to claimant by his primary care doctor.

The February 13, 2020, letter addendum to the Report dated November 19, 2019, from Kaiser provided the scores and results of the ADOS-2 test described in the November 19, 2019, report. The document provides that claimant received an overall score of 9 in the ADOS-2 test. The document further shows that a score of 9 is within the range for a diagnosis of ASD, which has a "cut-off" of 7. However, the score of 9 is not within the range for a diagnosis of autism, which has a "cut-off" of 10. Dr. Brooks explained that ASD is a milder form of autism and that claimant did not meet the ADOS-2 cut-off for a diagnosis of autism, but he did meet the cut-off for a diagnosis of ASD.

10. Claimant receives special education services from his school district, which conducted a multidisciplinary evaluation on February 17, 2020, and the results were summarized in a report. Numerous tests were administered to claimant for this evaluation, including the Autism Spectrum Rating Scale (ASRS), the Adaptive Behavior Assessment System, Third Edition (ABAS-3), the Kaufman Assessment Battery for Children, Second Edition (KABC-II), and Social Responsiveness Scale, Second Edition (SRS-2).

The results of the speech and language testing and observations showed that claimant has average expressive and receptive language skills. The results of a KABC-II show that claimant has average cognitive abilities. Dr. Brooks testified that the SRS-2 test is a questionnaire completed by claimant's parents for questions related to social responsiveness. According to claimant's parents' responses, claimant was placed in the severe range for social awareness, social cognition, social communication, social motivation, restricted interest and repetitive behaviors. Dr. Brooks explained that the ASRS test was also based exclusively on claimant's parents' answers to questions on a questionnaire. The results of the ASRS show that claimant had a "very elevated score" for all of the categories tested under the ASRS, which would indicate significant ASD behaviors in claimant.

The ABAS-3 test is also based exclusively on answers to a questionnaire provided by claimant's parents. The overall results of the ABAS-3 test based on claimant's parents' answers were in the "extremely low range" for adaptive skills. In the summary portion of the report, the document states that claimant's "parents overall indicate that [claimant] demonstrates significant autistic-like characteristics," and his "adaptive behavior to be in the extremely low range." However, Dr. Brooks explained that the parents' report regarding claimant's behavior did not correspond to the description of his behavior provided in the document by the school psychologist who observed claimant for over an hour on December 6, 2019. The school psychologist noted in the report of that observation that claimant "quickly warmed up to the examiners and began to talk and interact," and did so "appropriately." The school psychologist further noted that claimant "demonstrated appropriate pretend and symbolic play," "was able to independently complete a 9-piece puzzle," "communicated verbally in five to six word sentences," and "demonstrated appropriate eye contact and joint attention." The school psychologist also noted that claimant

"required minimal redirection to stay on task and focused throughout most of the assessment," and "followed directions independently." The school psychologist noted no behavioral difficulties for claimant.

The school psychologist also observed claimant for an hour and 40 minutes on January 22, 2020, in the school setting and recorded those observations. Claimant communicated well; was pretending to cook with food and had a taco; was able to communicate his wants, needs, likes and dislikes; presented as friendly and happy; demonstrated appropriate eye contact and joint attention; demonstrated pretend play; was able to comply with directives; was observed to "hand-flap" during play; and no behavioral difficulties were noted. Dr. Brooks explained that these observations by the school psychologist on both December 6, 2019, and on January 22, 2020, are not consistent with an individual with ASD.

11. With regard to the school district's SELPA IEP dated February 20, 2020, the document shows that claimant qualifies for special education services under the category of "established medical disability" and "autism." Dr. Brooks explained that the school district made claimant eligible for special education services under the category of autism based exclusively on the parents' reports of claimant's behaviors. She also stated that there are different standards used to qualify for special education services for school than for services from a regional center. Specifically, school districts may find an individual eligible for special education services under the category of autism if that individual exhibits "autistic-like behaviors" and the individual does not have to meet the formal diagnostic criteria for ASD as set forth in the DSM-5. In contrast, to receive services from a regional center, the individual must meet the formal diagnostic criteria for ASD as set forth in the DSM-5, and the ASD must be "substantially handicapping."



12. Dr. Brooks conducted a psychological evaluation of claimant on February 20, 2020, to determine if claimant is eligible for regional center services under the category of ASD. Dr. Brooks utilized the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3), Childhood Autism Rating Scale, Second Edition (CARS-2), ADOS-2, parent interview, her own observations of claimant, and review of the records described above. Dr. Brooks explained that the Vineland-3 is a self-report questionnaire completed by claimant's parents to provide information regarding claimant's everyday function. The CARS-2 is completed by interviewing the parents and also by observing claimant with more weight given to direct observations of claimant. The ADOS-2 is based upon observation of claimant after administering several activities and tasks to claimant meant to elicit ASD-like behaviors. Dr. Brooks recorded her results in a report, which was received into evidence.

Dr. Brooks testified and her report showed that claimant received a total score of 23 on the CARS-2, which shows that he demonstrates minimal signs of ASD. The results of the ADOS-2 show that claimant had an overall score of 2, which is not within the range of a diagnosis of ASD. While claimant's parents reported a number of behaviors that are autistic-like, during Dr. Brooks's observation of claimant, he demonstrated very few ASD-like behaviors. Dr. Brooks noted that claimant does have frequent stereotypical body movements typical of ASD, such as hand-flapping and opening his mouth. However, she explained that claimant's case is perplexing because he has a number of social strengths not typical of individuals with ASD. For example, Dr. Brooks observed claimant to be very friendly, excited to meet her, excited to tell Dr. Brooks about the costume he was wearing, excited to play with toys, shared enjoyment with the evaluator and his parents, demonstrated appropriate social referencing to his parents and the evaluator, wanted to see if others were observing what he saw, had a nice social smile, tried to draw the attention of others, directed facial expressions

toward others, and made verbal requests. Dr. Brooks stated that claimant made integrated eye contact, used gestures and words when making a request, and looked for reassurance from Dr. Brooks when completing a puzzle. He was able to read facial expressions, able to be drawn to a distant object using eye contact alone, able to engage in “make believe” and could explain his story to the evaluator. He was not observed to have restrictive interests and was able to transition between activities with no problem. Dr. Brooks explained that all of these behaviors she observed are inconsistent with a diagnosis of ASD. Dr. Brooks did take into account the information provided by claimant’s parents that he has sensory issues and stereotypical body movements. However, she explained that some children may have sensory issues and stereotypical body movements without having a diagnosis of ASD.

13. Dr. Brooks noted that the documents reviewed from claimant’s primary care physician show that he has a number of diagnoses, which on the surface may seem as if they are features of ASD. However, despite having a “number of pieces of multiple disorders,” claimant lacks the core features of an ASD diagnosis. While claimant does have sensory issues and repetitive behaviors, his extensive strengths in social communication show he does not meet the diagnostic requirements of an ASD diagnosis. She also stated that his history of epilepsy could be contributing to neurological differences that may result in his stereotypical movements. Ultimately, his clinical symptoms are inconsistent with a diagnosis of ASD.

### **Testimony of Claimant’s Mother**

14. Claimant’s mother testified at the hearing and the following factual findings are based on her testimony. She stated that claimant is four years old and is eligible for services from IRC under the category of epilepsy. However, claimant is not currently receiving any services from IRC other than “a worker who comes once a

year.” Claimant has four siblings, ages 18, 11, 10 and two. Claimant’s mother stated that three of claimant’s siblings have an ASD diagnosis. She claims that claimant has “each and every characteristic” of ASD, such as not playing with his peers, exhibiting repetitive slapping and opening of his mouth, does not like germs or water in his face, still wears diapers, has major behavioral issues, exhibits self-harm, and can’t chew because of sensory issues in his mouth. She stated that he hides behind tables and chairs and does not sleep. Claimant has frequent epileptic seizures and is being monitored by a neurologist. Claimant’s mother testified that she believes that claimant has “high functioning autism” because he loves puzzles, exhibits eye contact and is polite. She stated that claimant has anxiety and if you leave him alone he will look for you. Claimant has other sensory issues, including not liking the way clothes feel on him and avoiding touching the carpet. Claimant washes his hands frequently and will peel the skin off of his hands because he believes there are germs on his skin. Claimant also has a nurse follow him at school because he has an issue with choking as a result of his eating disorder.

15. Claimant’s mother expressed her deep concern for her son, her need to obtain services to help him, and her frustrations trying to obtain the needed services. She detailed claimant’s troubling behaviors. Claimant’s mother believes that services from IRC will benefit claimant greatly. She believes that IRC is retaliating against her because she provided IRC with documents from Kaiser showing that claimant has a diagnosis of ASD. Claimant’s mother wants IRC to provide a “third party evaluation” of claimant because Dr. Brooks’s evaluation is contradicted by the Kaiser evaluation.

## **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.)

### **Statutory Authority**

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

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream

life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

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

“Developmental disability” means a disability which originates before an individual attains age 18; continues, or can be expected to continue indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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,

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<sup>2</sup> The regulation still uses the term “mental retardation”; the DSM-5 uses the term “intellectual disability.”

autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

- (1) Originate before age eighteen;
- (2) Be likely to continue indefinitely;
- (3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and

which is not a result of generalized mental retardation, educational or 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. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act. A school providing services to a student as a result of the child having autistic-like features is insufficient to establish eligibility for regional center services under the Lanterman Act, which uses the DSM-5. Regional centers are governed by California Code of Regulations, title 17. Title 17 eligibility requirements for services are much more stringent than those of title 5.

## **Evaluation**

8. Claimant failed to prove by a preponderance of the evidence that he qualifies for services at IRC based on a diagnosis of ASD.

9. This decision is based on the findings and opinions contained in the documents addressed above, and Dr. Brooks's uncontroverted expert testimony that claimant does not meet the requisite criteria based on these documents, as well as based upon her own psychological assessment of claimant. As detailed in Dr. Brooks's report, as well as in the other documents reviewed, claimant suffers from multiple disorders that leave him with symptoms, such as repetitive motions and sensory issues, that appear to resemble those found in persons with ASD. However, Dr. Brooks's evaluation of claimant, as well as the observations noted in the Kaiser reports, show claimant is not properly diagnosed with ASD, and that claimant does not suffer from typical social deficits associated with ASD. To the contrary, claimant displays behaviors that are not consistent with the behaviors found in persons who typically have ASD, such as maintaining eye contact, verbally expressing his wants and desires, understanding facial expressions, and engaging in one-on-one interactions with others.

10. Claimant's mother was sincere and her testimony heartfelt. She is clearly motivated by her desire to help her son and obtain services that she believes are necessary to allow him to function in the world; she undoubtedly has her son's best interest at heart. However, claimant has the burden of proving that he is eligible for regional center services under the category of ASD. The weight of the evidence presented at hearing did not establish that claimant is substantially disabled because of ASD. As such, claimant failed to satisfy his burden of demonstrating eligibility for regional center services under the Lanterman Act under the category of ASD.

### **ORDER**

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services and supports on the basis of ASD is denied.

DATE: July 8, 2020

DEBRA D. NYE-PERKINS

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.