

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2020060031**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 1, 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

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

Complainant's mother represented complainant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on July 1, 2020.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act under the category of Autism Spectrum Disorder (autism)?

## **FACTUAL FINDINGS**

### **Background**

1. On April 9, 2020, IRC sent claimant's mother a Notice of Proposed action finding claimant, a 5-year-old boy, ineligible for IRC services because the intake evaluation, documents submitted by claimant's mother, and psychological assessment completed by IRC did not show claimant 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.

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to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

2. On May 10, 2020, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, claimant's mother challenged IRC's determination with respect to claimant's eligibility under the category of autism.

3. Following an informal meeting on June 11, 2020, to try and resolve the issue, IRC adhered to its determination. This hearing ensued.

### **Diagnostic Criteria for Autism**

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (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 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 to qualify for regional center services based on autism.

### **Testimony of Paul Greenwald and Documents Reviewed**

5. Paul Greenwald, Ph.D., has been a licensed psychologist since 1987. He is licensed in California and Florida. He has been a staff psychologist at IRC since 2008. Dr. Greenwald has extensive experience in conducting psychological assessments of children and adults suspected of having developmental disabilities that may qualify them for regional center services. He also supervises psychological assistants who conduct similar assessments. Dr. Greenwald is an expert in the field of psychology, as it relates to the diagnosis of autism under the DSM-5 and the Lanterman Act.

6. Dr. Greenwald also completed a psychological assessment of claimant on December 30, 2019, and March 5, 2020, and also reviewed the following documents: Early Start Individualized Family Service Plan (IFSP) dated March 13, 2017; Early Start Progress Report/ Periodic Review dated August 24, 2017; Early Start IFSP Exit dated January 3, 2018; Psychoeducational Assessment dated December 7, 2017; Individualized Education Program (IEP) dated December 8, 2017; Psychoeducational Assessment dated August 20, 2019; IEP dated August 30, 2019; Kaiser Permanente Outpatient Child Development Consultation dated March 23, 2017; Kaiser Medical Record dated January 23, 2019; Applied Behavioral Analysis (ABA) Progress Report dated June 6, 2020; and a February 28, 2020, Occupational Therapy Report. The following is a summary of Dr. Greenwald's testimony concerning the documents reviewed as well as his psychological assessment of claimant.

### **PRIOR ASSESSMENTS AND RECORDS**

Regarding claimant's March 13, 2017, Early Start IEP, it showed claimant received services due to delayed communication and because he needed help with his adaptive/self-help skills. Claimant received special instruction and ABA therapy. Although the report showed significant communication challenges, the report also showed claimant had good social and emotional reciprocity, facial expressions, and he was affectionate. None of these are characteristics of autism.

Regarding claimant's Kaiser Permanente Outpatient Child Development Consultation dated March 23, 2017, the reason for the referral was to see if claimant met the diagnostic criteria for autism. The report showed claimant smiled, had good interaction with others, and was well-behaved. He responded to his name, engaged in social emotional reciprocity, and played with toys appropriately. None of these characteristics are features of autism. The Autism Diagnostic Observation Scale (ADOS)

– Second Edition was administered. Claimant fell within the moderate to severe category for autism. Several other assessments also showed claimant had challenges with his self-help and daily living skills. Ultimately, the Kaiser assessment concluded claimant met the DSM-5 criteria for autism.

Regarding claimant's August 24, 2017, Early Start IEP, it similarly showed significant issues with communication, but the report also showed: claimant will sing songs; listen to a story quietly; watch television quietly; chew textured foods; cooperate with dressing and undressing; will feed himself; will follow simple commands; and will interact with his toys. The Early Start IEP did not show any of the characteristic features of autism like restricted or repetitive movements; sensory problems, or stereotyped patterns of behavior, interests, or activities.

Regarding claimant's Psychoeducational Assessment dated December 7, 2017, the testing psychologist specifically administered the ADOS and the Child Autism Rating Scale (CARS), to test for autism. On the ADOS, claimant was well outside the range for autism. On the CARS, claimant similarly showed that he did not meet the features for a diagnosis of autism. Regarding claimant's adaptive skills, on the Vineland, which is a report filled out by claimant's mother, she reported claimant had moderately low adaptive skills. On the rest of the assessments used to test his adaptive skills, however, combined with clinical observations, claimant was shown to have low average visual motor integration, that he relates well to adults, uses language appropriately, tolerates changes well, and reacts appropriately to stimulation. Thus, claimant did not meet the diagnostic criteria for autism nor did he show substantial deficits in three or more areas of major life activity, which would render him ineligible for regional center services.

Regarding claimant's IEP dated December 8, 2017, completed after the December 7, 2017, psychoeducational assessment, claimant was determined to be ineligible for special education. Specifically, claimant did not qualify under the category of "speech and language" impairment because claimant's expressive language skills were shown to be average and his receptive speech was in the low average. There was no evidence of restricted interests, repetitive body movements, no sensory issues, and no hyperactivity. Claimant's speech articulation was age-appropriate and his fluency, voice, and pragmatic language abilities were typical for a child of his age. Nothing showed claimant met the diagnostic criteria for autism under the DSM-5 or the criteria for "autistic-like" features used in special education eligibility determinations.

Regarding claimant's Early Start IFSP Exit dated January 3, 2018, the report showed claimant's mother reported claimant had made good progress and would continue with ABA services. The exit report also showed claimant was not eligible for Lanterman Act services.

Regarding claimant's Psychoeducational Assessment dated August 20, 2019, the Autism Rating Scale was administered and filled out by claimant's mother. The rating scale showed claimant had some features of autism. The ADOS was administered and again and showed claimant well outside the cutoff for a DSM-5 diagnosis of autism. Additionally, on the Differential Ability Scales, claimant showed various scores in verbal, nonverbal, and spatial reasoning. Specifically, he ranged from below average to high. These types of average and high scores are not consistent with autism. Claimant's visual motor integration was also average. His sensory and motor functions also showed to be in the average range. Thus, not only did claimant not meet the

diagnostic criteria for autism, he does not have corresponding adaptive deficits to meet the “substantial disability” requirement.

Regarding claimant’s Kaiser Medical Record dated January 23, 2019, it shows a diagnosis of autism, which was likely based on the 2017 Kaiser assessment. No new testing was conducted and there is nothing in that record to support the autism diagnosis.

Regarding claimant’s ABA Progress Report dated June 6, 2020, on the Vineland, again a rating filled out by claimant’s mother, it showed claimant had moderately low adaptive skills. However, overall, the team concluded “during this authorization, [claimant] has continued to demonstrate notable progress. He continues to meet acquisition of goals set for him in a short time span.” The ABA Progress Report did not show claimant has a substantial disability in three or more areas of major life activity as required by the Lanterman Act.

Regarding claimant’s February 28, 2020, Occupational Therapy Report, it showed claimant had some challenges in self-help but overall, met three out of four goals set for the period. This report similarly did not show claimant has a substantial disability in three or more areas of major life activity as required by the Lanterman Act.

### **DR. GREENWALD’S EVALUATION**

7. Dr. Greenwald administered the following assessments: The Wechsler Intelligence Scale for Children – Fourth Edition (WISC); the ADOS; the CARS; and the Autism Diagnostic Interview – Revised (ADI-R); along with clinical observations. On the CARS, it showed claimant exhibited minimal to mild autism features. On the ADI-R, it showed claimant’s scores approached mild features of autism in two of three areas, specifically, with respect to communication. Overall, in consideration of claimant’s

scores on the other assessments, Dr. Greenwald gave claimant a Level I “provisional” diagnosis of autism.

With respect to claimant’s adaptive skills, on the Adaptive Behavioral Assessment, claimant’s scores ranged from low to low average to extremely low. During the clinical assessments, however, claimant interacted with Dr. Greenwald, showed emotional/social reciprocity, and followed him into the exam room. Claimant did not display any repetitive or restricted interests, hand flapping, or sensory issues. During the March 5, 2020, classroom observations, claimant was observed to be playing with children, interacting with others, and showing cooperative enjoyment. Claimant also shared playroom equipment. In sum, Dr. Greenwald found that while the scores on the ABAS showed claimant has some deficits in communication, claimant did not meet the substantial disability criteria required to be found eligible under the Lanterman Act.

Ultimately, Dr. Greenwald gave claimant a Level I provisional diagnosis of autism, but concluded claimant is not eligible for regional center services because even claimant does not have a substantial disability in three or more areas of major life activity. A Level 1 provisional diagnosis of autism means he integrated all sources of information, took a conservative approach because there are some indications that there might be autism, but he cannot really be sure because there is enough evidence also showing claimant does not meet the diagnostic criteria for autism. The recommendation for ineligibility is because the behaviors that were observed that were consistent with autism were still very mild and were not accompanied by substantial deficits in three or more areas of major life activities.

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

8. Claimant's mother's testimony is summarized as follows: claimant's mother believes claimant needs IRC services and does not understand why he does not qualify since he has a diagnosis of autism. She enrolled claimant in Early Start because he was not around children and had communication problems. Claimant has been receiving ABA therapy since he was two and a half years old. He has been receiving occupational therapy since the same time. Claimant does "flap and jump around" sometimes. And his self-direction is "OK" if claimant's mother is with him. Claimant's mother knows claimant can "get by" with the language skills he has. Claimant can ask questions but claimant cannot have a conversation. Claimant's mother said claimant cannot read people's facial expressions; she can ask him if she is happy or sad but claimant does not know how to respond to that. Claimant does benefit from his ABA and occupational therapy, but claimant's mother feels claimant needs whatever services IRC would offer as well.

## **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 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.

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.

(b) The Developmental Disability shall:

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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.

- (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.)

## **Evaluation**

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services. The only expert who testified was Dr. Greenwald, and in his uncontested expert opinion, while claimant may have autism, he is not substantially disabled in three or more areas of major life activity. Moreover, given the multiple assessments over the years and the inconsistent results with respect to autism (specifically, claimant's results on the ADOS), it cannot be said that a preponderance of the evidence even established claimant meets the DSM-5 criteria for autism. Thus, the reason for the "provisional" diagnosis. Accordingly, claimant is ineligible for regional center services at this time.

## **ORDER**

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. Accordingly, claimant's appeal is denied.

DATE: July 14, 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.