

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

**In the Matter of:**

**CLAIMANT**

**VS**

**INLAND REGIONAL CENTER, Service Agency.**

**OAH No. 2020070014**

**DECISION**

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephonic conference on August 6, 2020.

Senait Teweldebrhan, Fair Hearings Representative, Fair Hearings and Legal Affairs, Inland Regional Center represented the Inland Regional Center.

Mother represented Claimant.<sup>1</sup>

Testimony and documents were received in evidence. The record was closed, and the matter was submitted for decision on August 6, 2020.

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<sup>1</sup> To preserve confidentiality, neither Claimant nor Mother is identified by name.

## **ISSUE**

Whether claimant is eligible for regional center services and supports under the qualifying category of autism as provided for in the Lanterman Developmental Disabilities Services Act (Lanterman Act).<sup>2</sup>

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Claimant is a 17-year-old boy who lives in the family home with his mother and at least one sibling.
2. Claimant applied for services from Inland Regional Center (service agency).
3. On May 14, 2020, a service agency team, consisting of a physician, a psychologist, and the director/program manager or designee, reviewed documents provided by claimant's mother to determine whether he was eligible to receive regional center services. The service agency performed no assessment. The comments from the team review were: "history of selective mutism; no testing done to support M.D. diagnosis of ASD. Is eligible for special education services under specific learning disability; started receiving special ed services in 2015 (age 15)." The team concluded that claimant was ineligible to receive regional center services.

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<sup>2</sup> Welf. & Inst. Code, § 47500, et seq. The term "autism" is used interchangeably with the term "autism spectrum disorder," which is also referenced as "ASD".

5. By letter dated May 19, 2020, the service agency provided claimant with a Notice of Proposed Action informing him that he was not eligible to receive regional center services, a copy of the relevant statute and regulations, and information regarding his rights. Claimant filed a timely Fair Hearing Request.

6. On July 23, 2020, the service agency conducted a telephonic informal meeting. Present were the representatives in this case. The evidence did not establish that there was anyone else at the meeting.

During the meeting, claimant's mother explained her concerns, her observations, and reasons she believes claimant is eligible to receive regional center services, including information not included in the records that she provided the service agency. Among other things, claimant's mother described his behavior, both as a younger child and currently.

During the meeting, claimant's mother stated she would "seek to obtain additional records" and would provide those records to the service agency; the service agency agreed to review any additional records for consideration.

The service agency affirmed its decision claimant was not eligible to receive regional center services because there is insufficient evidence to establish that he presents with a qualifying condition.

By letter of the same date, the service agency informed claimant of the foregoing.

On August 6, 2020, this hearing ensued.

## **Service Agency's Evaluation**

7. Holly Miller, Psy.D., a service agency staff psychologist, explained the criteria for determining eligibility for regional center services. Dr. Miller had no role in the evaluation of claimant's packet. Dr. Miller did not participate in the team meeting to determine claimant's eligibility to receive services based on autism spectrum disorder.

Dr. Miller holds a doctorate in psychology and is licensed as a psychologist in the State of California. She has been a service agency staff psychologist for four years; part of her duties includes conducting assessments to determine whether an individual is eligible to receive regional center services.

8. In determining eligibility, the service agency relies on the eligibility criteria for regional center services under the Lanterman Act, its implementing regulations, and the diagnostic criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5).

9. In summary, to be diagnosed with autism spectrum disorder, an individual must have:

- Deficits in reciprocal social communication, and
- Either or both: (1) patterns of stereotyped and/or repetitive behavior or interests, and/or (2) sensory processing anomalies.

The evaluator is looking for behaviors presenting at an early age, persisting throughout the child's life, and creating a substantial impairment for the child.

9. In rendering the decision about eligibility, in addition to the DSM-5 diagnostic criteria for autism spectrum disorder and the laws and regulations regarding eligibility, the service agency relied on records provided by claimant's mother and, presumably claimant's mother's description of his behaviors.

10. The most significant evidence of claimant's behavior, both as a younger child and currently, was provided by his mother during the informal meeting and was discussed in the July 23, 2020 letter from the service agency. Claimant's mother reported as a young child claimant did not like being around a lot of people; he began walking at the age of one year; began "baby talk" at one to two years of age and "regular talk" at three to four years of age; he would not make eye contact with people and still does not do so; he does not go outside to play with the neighborhood children instead, he stays at home and plays on his telephone and video games. He has one friend in school and interacts with other friends online or through videogames.

11. Claimant provided the service agency with an August 17, 2017 memorandum<sup>3</sup> prepared by Victor Community Services' Amber Massie, MFT intern, and Lori DeChant, LMFT, Clinical Supervisor, for claimant's mother. These practitioners confirmed, beginning May 24, 2017, claimant received services from the Success First Program at Victor Community Services. The services consisted of a clinician, MHRS, and a parent-partner in the home and school settings; and he received individual and

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<sup>3</sup> It is noted that statements by Dr. Patel in this memorandum constitute double hearsay. The information is cited because claimant's mother provided the document to the service agency, and the service agency relied on this document, and others, to render its determination claimant is ineligible to receive regional center services.

family therapy and behavioral modification. Further, the August 17, 2017 memorandum states that on June 24, 2017, Dr. Patel evaluated claimant, and identifies Dr. Patel's "DSM V" diagnoses: selective mutism, specific learning disorder with impairment in reading; specific learning disorder with impairment in written expression; specific learning disorder with impairment in mathematics; and autism spectrum disorder. Finally, according to the August 17, 2017 memorandum, Dr. Patel recommended that claimant continue receiving treatment, that he was not taking psychotropic medication and that he should be evaluated by the service agency.

The practitioners who wrote the August 17, 2017 memorandum referred to another provider's (Dr. Patel) diagnoses. No records from Dr. Patel were included. No information regarding how Dr. Patel made the diagnoses was provided.

Typically, a diagnosis of autism spectrum disorder is made after a comprehensive assessment performed by a psychologist or neuropsychologist. No information was offered to establish that such an assessment was performed.

Dr. Miller described the diagnosis of selective mutism. She explained the DSM-5 classifies selective mutism as a mental health condition within the anxiety disorders classifications. Generally, selective mutism is a failure to speak or use verbal language in specific situations. Stated in the alternative, selective mutism is a lack of speaking in a specific setting versus "generalized in any setting." This condition is not due to a language or literacy issue; instead the individual chooses not to communicate. Selective mutism and autism spectrum disorder are not diagnosed simultaneously.

12. Dr. Miller reviewed an August 30, 2018 Psychoeducation Assessment Report from Desert/Mountain Special Education Local Plan Area that claimant's mother provided to the regional center. Claimant was first assessed to receive special

education services when he was 15 years of age, in the ninth grade. At that time, he attended a public school within the general education setting for all classes.

The purpose of the assessment was "to evaluate claimant's aptitudes (i.e., cognitive strengths and weaknesses), to provide information regarding his academic strengths and weaknesses, determine if there is a disability condition as well as recommend strategies that will aid in his progress and assist in his educational programming." The report includes a summary of the procedures and testing measures.

Claimant's mother provided medical/health professional documentation from Victor Community Support Services, which references Dr. Patel's diagnoses of selective mutism, specific learning disability with impairments in reading, writing and math, and autism spectrum disorder. This appears to be the letter described in Finding 11.

As part of the assessment, claimant was observed in the classroom and during the psychoeducational testing.

Among other things, the report states: "[Claimant's] estimated intellectual ability is in the Average Range/Within Normal Limits. The results of the cognitive and neuropsychological processing testing indicated that the student does have basic psychological processing deficits in the areas of auditory processing, sensory-motor processing . . . and cognitive (including association, conceptualization, and expression). These basic psychological processing deficits may adversely impact educational programming."

Regarding her observations, claimant's mother reported claimant did not like to go outside and always wanted the house blinds closed.

Claimant's teachers described their observations and reported claimant did not engage with other students and was withdrawn. They commented claimant was "low energy and appears unmotivated. He waits for the staff to give him attention. He is reported as being extremely quiet and does not talk with other students."

According to the psychoeducational report, overall, claimant's social-emotional-behavioral (SEB) functioning appeared to be an area of need. "SEB factors are impacting student. It is recommended that the student's SEB functioning be monitored. If his SEB functioning becomes problematic, the school team should determine appropriate positive behavioral intervention and supports (PBIS). [Claimant] would benefit from educationally-related mental health services."<sup>4</sup>

The report describes adaptive functioning and states that there were no concerns expressed by staff or his parent regarding his adaptive behavior functioning in his educational records. Further, it stated:

[Claimant] was observed by this assessor during the psychoeducational testing sessions on 05/29/18. He presented as a student with adequate self-help skills when compared to same aged non-disabled peers.

The data appears to indicate that [claimant] is able to independently take care of his personal and daily living needs. There were no concerns reported with the student's adaptive behavior functioning. Adaptive behavior factors

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<sup>4</sup> Exhibit 6, bates stamp IRC \_ 33



are not impacting the student and is not an area of suspected disability.<sup>5</sup>

Following the assessment, it was determined claimant was eligible to receive special education services because under Education Code, Title 5, subdivision j(4)(a), he met the criteria for a specific learning disability. Claimant demonstrated "a severe discrepancy between intellectual ability achievement in reading comprehension, math fluency, math problem solving and math calculation."

Based on the psychoeducational assessment, claimant was not determined eligible to receive special education services based on behaviors consistent with autism.

In this report, there was no discussion of autism related concerns; further, the discussion about his adaptive functioning skills is inconsistent with a finding that he has a "substantial disability."

13. Claimant's mother provided the service agency with an Individualized Education Plan (IEP), dated September 4, 2019. Claimant's mother attended the September 4, 2019, IEP meeting. Among other things, the IEP describes claimant's strengths, weaknesses, his post-secondary goals and the prescribed steps to achieve the IEP goals. Based on her review of the report, Dr. Miller determined there were no behaviors described in this report indicating that claimant presented with symptoms of autism.

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<sup>5</sup> Exhibit 6, bates stamp IRC \_ 34.

14. Dr. Miller reviewed an October 24, 2019 letter from John Adeniji, NP, Behavioral Health Consultants, Inc., stating that claimant was first seen in his office on January 17, 2019 and reporting claimant's diagnoses as: unspecified mood (affective) disorder, autistic disorder, generalized anxiety disorder and intermittent explosive disorder. Mr. Adeniji provided no information about whether any tests were performed or how these diagnoses were rendered. Typically, a diagnosis of autism is not made by a nurse practitioner after a medical consultation but, instead, after an assessment by a psychologist or neuropsychologist.

15. Claimant's mother provided an April 14, 2020 medical report from Akhil Sharma, M.D. Despite the date of the report, it documents two office visits with claimant – one with Dr. Sharma on November 16, 2018, and the other with Lisa Morales on December 5, 2018.

The April 14, 2020 report documents, on November 16, 2018, there was a "routine child health examination without abnormal findings." The examination included a physical examination, and orders for additional testing and recommendations, such as exercise and dietary counseling and a referral for dental care. Included in Dr. Sharma's problem list is a diagnosis of autism. Regarding this issue, Dr. Sharma stated "Keep f/u with therapy at school. Guidance given. Appears high functioning."

According to the April 14, 2020 report, when claimant was seen by Ms. Morales, on December 5, 2018, his mother reported she was there for a follow-up on the diagnosis of autism; his mother explained claimant had a hard time controlling his behavior when upset, that "he had seen a psychologist for aggression a few years' prior but stopped when they moved"; however, recently, his aggressive behaviors increased both at home and school.

The April 14, 2020 report provided no information to explain whether Dr. Sharma was diagnosing autism or whether he was recommending claimant for evaluation for autism. Nothing in the report indicates a basis for a diagnosis of autism.

16. Dr. Miller considered an undated memorandum from Dessarina Mulitalo, registered associate MFT, verifying services provided to claimant. In that memorandum, Ms. Mulitalo explained claimant had been receiving services from the Success First program as of January 8, 2020; described the mental health services claimant received; and included claimant's diagnoses of major depressive disorder recurrent, severe, without psychotic features, other specified anxiety disorders, and autism spectrum disorder. No information was included in the document to establish how the diagnoses were rendered

17. Based on the evidence in this record, claimant has a learning disorder and mental health issues. His mother is working diligently to obtain services to meet his needs. Nevertheless, after reviewing the records provided by claimant's mother and submitted by the service agency in this case, Dr. Miller concluded there is no basis to conclude that claimant has autism spectrum disorder; and that even if he has autism spectrum disorder, there is no evidence that it constitutes a substantial disability.

## **LEGAL CONCLUSIONS**

### **Statutes and Regulations**

1. Welfare and Institutions Code section 4512 states, in part:
  - (a) "Developmental disability" means 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. 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 an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

[¶] . . . [¶]

(l) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency. . .

2. California Code of Regulations, title 17, section 54000, states:

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

3. California Code of Regulations, title 17, section 54001, states in pertinent part:

(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. . .

## **Burden of Proof**

4. As claimant seeks eligibility, he bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

## **Evaluation**

5. Claimant is a 17-year-old male living at home with his mother and at least one other sibling. He applied to receive regional center services based on autism.

Claimant's mother described claimant's behaviors that she believes are symptoms of his autism spectrum disorder. She provided several reports indicating he has been diagnosed with autism or autism spectrum disorder. In addition, she provided a psychoeducational assessment and an IEP.

No psychological or neuropsychological assessment was provided. None of the records indicate how the diagnosis was rendered or how he met the DSM-5 diagnostic

criteria for autism spectrum disorder now or in the past. No evidence was offered to establish claimant has deficits in adaptive functioning.

There is no dispute that claimant struggles academically due to a learning disability and that he has mental health issues requiring treatment. However, these are conditions not within the limited coverage of the Lanterman Act.

Based on the records claimant's mother produced, the service agency's team review, Dr. Miller's review and testimony, claimant has not met his burden of establishing by a preponderance of the evidence his entitlement to Lanterman Act services and supports on the qualifying diagnosis of autism.

## **ORDER**

1. Claimant's appeal is denied.
2. Inland Regional Center's determination Claimant is not eligible to receive regional center services and supports pursuant to the Lanterman Developmental Disability Services Act is affirmed.

DATE: August 20, 2020

VALLERA J. JOHNSON  
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.