

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2020070198

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on August 12, 2020.

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

Claimant was represented by her authorized representative.

The record was closed and the matter submitted for decision on August 12, 2020.

ISSUE

Is claimant eligible for regional center services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Background

1. On June 11, 2020, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant, a 36-year-old woman, that she was not eligible for regional center services.

2. On June 19, 2020, IRC sent claimant a Notice of Proposed Action stating that its eligibility team found that claimant 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).

3. On June 29, 2020, claimant filed a Fair Hearing Request challenging IRC's eligibility determination. Specifically, claimant contends she is eligible for regional center services under the category of autism. This hearing followed.

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 spectrum disorder to qualify for regional center services.

Evidence Presented at Hearing

5. Chase Espinoza, Psy.D., conducted a psychological evaluation and prepared a report dated August 16, 2019. Claimant was referred by her primary care physician due to longstanding autism-associated symptoms and traits. Dr. Espinoza conducted a detailed psychiatric and medical history. During her early development, claimant never cried and was slow to acquire speech, which did not occur until she was 30 months old. Claimant reported struggling with developing and maintaining friendships, anxiety, and inability to hold a paying job. Dr. Espinoza administered a variety of tests, most of which were self-report measures. Dr. Espinoza administered the Autism Spectrum Quotient. Claimant scored precisely at the cutoff for her age and gender. Other testing revealed symptoms and traits consistent with those who are diagnosed with high-functioning autism. In conclusion, Dr. Espinoza concluded claimant meets the diagnostic criteria for autism spectrum disorder of mild severity, requiring "level one" support.

6. Ruth Stacy, Psy.D., is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for over 27 years. In addition to her doctorate degree in psychology, she also holds a master of arts in counseling psychology, a master of arts in sociology, and a

bachelor of arts in psychology and sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism, and in the determination of eligibility for IRC services.

7. Dr. Stacy reviewed Dr. Espinoza's report. Much of the testing involved self-reporting measures, which can be inflated by mental health overlays such as general anxiety disorder, which claimant has been diagnosed. While Dr. Espinoza diagnosed claimant with autism, he also noted a "level 1" severity. Typically level 1 severity is given when person is at a cut-off or has inconsistencies and needs minimal level of support. In order to qualify for regional center services, a person must have substantial deficits in three or more major life activities caused by the developmental disability. Looking at the report and other records, it Dr. Stacy does not believe those criteria have been met. Many of claimant's skills and abilities were closer to the mean than persons with autism spectrum disorder. Moreover, there was no indication that autism was ever suspected prior to age 18. Claimant was not provided special education services, and there was no indication that autism was ever suspected by educational, medical, or mental health professionals. The criteria for receiving special education services under the category of autism are less stringent than under the Lanterman Act.

8. Dr. Stacy did not dispute that claimant might benefit from regional center services. However, in order to qualify for services, one must meet the requirements under the Lanterman Act. Although Dr. Stacy has encountered individuals who qualified for services despite not having a formal autism diagnosis before the age of 18, these individuals generally have documented histories of receiving special education services, usually in the speech and language category.

9. Based on these documents, Dr. Stacy agreed with the multidisciplinary team's conclusion that claimant is not eligible for regional center services.

10. Claimant's mother's testimony and letter are summarized as follows: When claimant was a baby she wouldn't roll over and never cried, which was different from claimant's older sibling. Claimant's mother mentioned this to claimant's doctor, he said claimant would catch up. They lived in a small town and there were not a lot of options. When claimant turned two, she was still not walking. She did not start to talk until three-and-a-half years old. In school, she did not participate in class, play with other children, or speak. She tried to bring it to the attention of teachers but received little help. Claimant was placed in an experimental class between kindergarten and first grade. However, the teacher was from outside the district, and it appears she was more interested in her own research than the children.

11. Claimant was bullied in eighth grade so claimant transferred to a charter school, where she graduated with a high school diploma at age 21. Claimant attended a community college where she earned 88 credits and had a 3.02 grade point average. Claimant was married in 2011, but it was an abusive relationship, and they were divorced in 2019. Claimant becomes very confused with space and time. There was an example where she took the bus downtown, but when she was ready to go home, she got on the same bus which took her farther away from home. Claimant's mother had to pick her up at the end of the bus route. Claimant receives food assistance but will only buy junk food. The money she is given she spends on trinkets and other trivial items. She knows how to make a grocery list and can shop as long as someone else controls the money. At family events, she is generally non-communicative. Claimant does have a desire to have friends. Claimant's mother once found claimant standing and singing at a street corner. Claimant has applied for jobs at Walmart and other places but has found it hard to find employment. Claimant is currently living in Victor Valley with her grandmother. She is not working but has enrolled in community college next semester.

12. Claimant has always had issues with hygiene. She does not care about appearance. She is very sensitive to clothing textures, and as a child would refuse to sleep under the covers.

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.)

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 retardation¹, 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 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 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.”

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." Intake shall also include a decision to provide assessment but does not require an assessment. (*Id.* at subd. (a)(2).)

Evaluation

9. While claimant may have generalized anxiety and even a diagnosis of high-functioning autism, both of which affect her daily life, she failed to establish that she qualifies for regional center services. The only expert who testified was Dr. Stacy. Based on the records provided, Dr. Stacy's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism. In particular, claimant has not established that her condition constitutes a "substantial disability" within the meaning of California Code of Regulations, title 17, section 54001. While claimant might benefit from services to help her achieve greater independence, the issue is whether she meets the specific diagnostic criteria of the Lanterman Act. Based on the records provided, a preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category.

ORDER

Claimant's appeal from Inland Regional Center's determination that she is not eligible for regional center services is denied.

DATE: August 24, 2020

ADAM L. BERG

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.