

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2020090407

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely on March 8, 2021, via Microsoft Teams in light of the ongoing public health emergency regarding the COVID-19 pandemic.

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

Neither claimant nor her authorized representative appeared.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on March 8, 2021.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a diagnosis of autism spectrum disorder (autism), intellectual disability, or a condition closely related to or that requires treatment similar to a person with an intellectual disability (fifth category)?

FACTUAL FINDINGS

Background

1. On August 17, 2020, IRC sent claimant's father a Notice of Proposed Action stating that claimant, a 20-year old woman, did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by IRC did not show claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or the fifth category.

2. On August 28, 2020, claimant's father filed a Fair Hearing Request challenging IRC's eligibility determination, in which he stated that claimant had a "disability" since she was 13 years old.

3. An informal telephonic meeting was held on September 20, 2020, wherein claimant's father told IRC's representatives that claimant was diagnosed with psychosis, a mental disorder, when she was in middle school. Claimant began seeing a psychiatrist at 14 years old and took medications for her psychosis between the ages of 14 and 16, as her condition worsened. IRC adhered to its determination that

claimant was not eligible for regional center services. In a letter memorializing the meeting, IRC wrote:

At this time, IRC is standing by its decision that [claimant] is not eligible for regional center services. IRC initially made its eligibility decision based off records review. The records provided at the time did not warrant testing or establish evidence of eligibility. According to [claimant's] October 09, 2017, Individualized Education Program (IEP) report, [claimant] qualified for Special Education (SE) services under the category of Emotional Disturbance (primary) and Specific Learning Disability (secondary). However, Emotional Disturbance and Specific Learning Disability are not a qualifying condition for regional center services. In addition, [claimant] has a history of Psychosis, which can have an impact on her daily living and functioning abilities. However, for regional center eligibility, the developmental disability, shall not include handicapping conditions that are solely psychiatric in nature. . . .

IRC indicated in the letter that, based on claimant's father's representation that he recently obtained an evaluation of claimant from a mental health facility in Riverside, that it would reconsider its eligibility determination if additional documents were submitted.

4. On October 29, 2020, following the submission of additional records from Kaiser Permanente in Riverside dated February 17, 2020, the IRC eligibility team

(comprised of a medical doctor, psychologist and program manager) stood by its original eligibility determination.

5. Notice of hearing was sent to all parties by OAH originally setting the hearing on October 22, 2020. This document contained all relevant information regarding submission of exhibits and how to join the remote hearing. Claimant's father requested a continuance the day before the hearing so he could obtain more records. The request was granted, and an order dated October 21, 2020, was sent to the parties continuing the matter to March 8, 2021.

6. On March 3, 2021, claimant's father had an e-mail exchange with IRC. Claimant's father wanted to obtain additional records. Claimant's father did not state if he wanted to withdraw the fair hearing request to obtain additional records or wanted a continuance. IRC properly advised claimant's father that if he wanted to continue the matter, he would need to make a request to do so with OAH.

7. One hour before the commencement of hearing on March 8, 2021, claimant's father contacted IRC (and not OAH) indicating he did not wish to pursue the hearing. However, he was unclear (again) as to whether he wanted a continuance or to drop the matter entirely. IRC did not oppose the continuance, however, given that the request was not made to OAH, unclear, and untimely – good cause was not established for a continuance pursuant to Welfare and Institutions Code section 4712. The parties were notified by OAH (telephonically and via e-mail) that the matter would proceed as scheduled.

8. When the hearing commenced, claimant's father did not appear. Multiple attempts were made to contact him through Microsoft Teams at his phone number of record, to no avail. This hearing followed.

Diagnostic Criteria for Autism

9. 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 based on autism.

Diagnostic Criteria for Intellectual Disability

10. The DSM-5 contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

Diagnostic Criteria for Fifth Category

11. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling conditions closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not include other handicapping conditions that are "solely physical in nature." (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category

must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains

or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

SUBSTANTIAL DISABILITY

The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have

significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Evidence Presented at Hearing

12. Sandra Brooks, Psy.D. is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology in 2006 from Loma Linda University. She also has a Bachelor of Arts in English and Psychology and a Master of Science in Experimental Psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Prior to that, she served as a psychological assistant at IRC from 2007 to 2009. Prior to that, she served in multiple positions across the country. She has been involved with many professional presentations in the field of psychology and attended countless trainings and workshops in her field. Dr. Brooks is an expert in the diagnosis and assessment of persons with autism and intellectual disability, and in making eligibility determinations for regional centers under the categories of autism, intellectual disability, and fifth category.

13. The following is a summary of Dr. Brooks's testimony and the records submitted by claimant, which Dr. Brooks reviewed and analyzed.

14. An October 29, 2017, Individualized Educational Program (IEP) completed by claimant's school district when she was 17 years old showed claimant was receiving special education under the categories of emotional disturbance and specific learning disability. Nothing in the IEP indicates claimant has autism or an intellectual disability, nor does it indicate claimant suffers from significantly low adaptive skills. It notes that claimant is on the high school diploma track and is devoid of any information that

would establish claimant is substantially disabled in three or more areas of a major life activity.

15. A December 4, 2017, psychoeducational report completed by claimant's school district, when she was 17 years old similarly was devoid of information that would establish claimant suffered from autism, intellectual disability, or would meet eligibility criteria under the fifth category. Claimant's grades in school at that time were scattered – ranging from A's to F's. Scattered scores are not consistent with a developmental disability, but rather to some other factor. The individual assessing claimant administered the Wechsler Abbreviated Scale of Intelligence – Second Edition (WISC). Her scores on the WISC were just as scattered as her grades, ranging from borderline to deficient. Her verbal IQ score was 76 while her perceptual reasoning score was 52. Because of the markedly different scores, her full-scale IQ was 65. However, claimant demonstrated age-appropriate expressive and receptive language skills.

On the Wechsler Academic Achievement Test, claimant's scores again were scattered. They ranged from low to average for reading and low to average in mathematics. Her oral language skills tested as "very low" and her written expression scores showed she was in the low average range.

Overall, the individual administering the assessment concluded claimant's cognitive functioning was in the deficient to borderline range. Based on claimant's history, her scattered scores, and interviews, claimant was determined to be eligible for special education services under the categories of emotional disturbance. She was specifically found not to meet any criteria for services under the categories of autism or intellectual disability.

16. Claimant underwent a psychological assessment at Kaiser Permanente in Riverside on February 17, 2020, when she was 19 years old. Part of that assessment included interviews. Claimant's mother reported that claimant had a "different attitude" starting at approximately 12 years old. Since that time, claimant had seen many psychologists and psychiatrists. Claimant's mother said claimant was a good baby and met all of her developmental milestones. Claimant's mother said claimant began having behavioral tantrums at age 12 and had a previous diagnosis of "psychosis." Claimant's mother said claimant's behaviors worsened when she was 13 or 14 years old. Claimant told family members she is going to kill them.

Claimant reported to the psychologist performing the assessment that her mother was correct in her reports, but said she did not have any issues prior to sixth grade because she was "normal" back then. Claimant reported she enjoyed shopping, cleaning, drawing, putting on makeup and reading. The psychologist performing the assessment did not note anything unusual (i.e. like restricted or repetitive interests, poor eye contact, expressive and receptive language problems) in speaking with claimant.

On the Behavioral Assessment Scale for Children, claimant reported mostly average and not clinically significant scores for the various subsets, and only reported at risk for school and attitude. On the same assessment, claimant's mother reported clinically significant concerns regarding withdrawal and functional communication, and at-risk regarding adaptability, social skills, and leadership.

On the Minnesota Multiphasic Personality Inventory, the individual administering the assessment noted claimant was able to adequately read and understand the test items and respond in a consistent manner. Her profile indicated claimant lacked impulse control, got bored easily, and can be self-indulgent and

manipulative. Claimant's responses showed she has an average interest in other people and is not socially isolated or withdrawn.

On the thematic apperception test, claimant was observed to recognize basic emotions and social situations. Claimant's performance on this test showed she was logical and coherent and there was no evidence of disorganization.

No assessments regarding claimant's adaptive skills were administered. Nothing in the assessment showed claimant suffers from a substantial disability in three or more major life activities.

On the Wechsler Adult Intelligence Scale – Fourth Edition, claimant's overall IQ was 62, although her scores on the various subsets were again scattered between borderline and very low.

Notwithstanding the lack of sufficient data prior to the age of 18 that claimant suffered from cognitive delays consistent with a DSM-5 diagnosis of intellectual disability, the individual conducting the assessment concluded claimant had "moderate" intellectual disability and that she did not exhibit symptoms of mood, personality, or psychotic disorder, but did not state whether any assessments were administered to test for mood, personality, or psychotic disorders. The assessor acknowledged that claimant's mother reported claimant was "normal" until age 12, but disregarded that age of onset (which cuts against intellectual disability or any developmental disorder for that matter) and instead noted that she still felt claimant had intellectual disability because claimant did not have "good grades" growing up and believed her deficits only became apparent when she entered high school where academic demands increased. This diagnosis is not consistent with the DSM-5, which

requires documented deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period.

17. Overall, Dr. Brooks concluded claimant did not meet the DSM-5 criteria for intellectual disability. Nothing in claimant's submitted records indicated claimant met the DSM-5 criteria for autism. Finally, while claimant may have a lower IQ score or other factors (such as emotional disturbance) affecting her cognitive performance, nothing showed claimant is substantially disabled in three or more areas of a major life activity.

LEGAL CONCLUSIONS

Applicable Law

1. 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.

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 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) Originate before age eighteen;

(2) Be likely to continue indefinitely;

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.

(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 under any qualifying category. The only expert who testified was Dr. Brooks. Based on the records provided, Dr. Brooks's uncontested expert opinion was that claimant is not eligible for regional center services. The records submitted did not show claimant had a developmental disability prior to the age of 18; to the contrary, the records established claimant suffered from emotional

disturbance and specific learning disability. Mental health diagnoses and specific learning disability are specifically excluded from regional center eligibility. Although claimant's February 17, 2020 report from Kaiser Permanente concluded she had "moderate intellectual disability," the report did not contain enough data to substantiate this conclusion and was wholly inconsistent with all the other records obtained during claimant's developmental period. Also, the Kaiser report was issued when claimant was 19 years old. Finally, even in the fair hearing request, claimant's father indicated that he and claimant's mother did not notice a "disability" until claimant was about 13 years old – and in the informal meeting he indicated claimant's psychiatric conditions did not commence until she was 14 to 16 years old. Developmental disabilities do not appear in a person's late teen years, rather, they appear early in the developmental period and are lifelong struggles – that must be documented.

9. On this record, there is insufficient evidence to show claimant qualifies for regional center services under any category.

ORDER

Claimant's appeal is denied.

DATE: March 16, 2021

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.