

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020100524

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 22, 2021, by telephone due to the ongoing coronavirus pandemic public health emergency.

Keri Neal, Fair Hearings Representative, represented the service agency, Inland Regional Center (IRC).

Claimant's authorized representative did not appear.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 22, 2021.

ISSUES

Is claimant eligible for regional center services under any of the eligibility criteria in the Lanterman Act?

SUMMARY

The evidence did not establish that claimant is eligible for regional center services.

Jurisdictional Matters

1. Claimant applied for regional center services. After conducting an assessment and records review, IRC determined that claimant was not eligible for services. On September 8, 2020, IRC issued its Notice of Proposed Action. Claimant filed a fair hearing request on October 2, 2020.

2. Claimant's representative submitted additional records to IRC for review. On February 16, 2021, IRC notified claimant's representative that the additional records did not change its determination that claimant was not eligible for services.

3. Notice of the hearing was properly served on claimant's representative. On March 22, 2021, the record was opened. IRC requested to proceed on the merits despite claimant's failure to appear at the hearing. Notice to claimant and his representative having been properly served, IRC's request was granted under Welfare and Institutions Code section 4712, subdivision (a), which requires a hearing to be held within 50 days of the date a claimant's fair hearing request is filed, unless good cause is found to continue the matter. Here, no good cause to continue the hearing was

presented. Jurisdictional documents were introduced, and documentary evidence and sworn testimony were received from IRC.

Background

4. Claimant is a six-year-old male. He lives with adoptive parents, who are also his maternal aunt and uncle. His birth mother used drugs; at birth, claimant was found to have high levels of drugs in his system but was determined not to be addicted. He later began showing signs of aggression toward other children in preschool. Several preschools have declined to enroll him because of this aggressive behavior. He receives special education services from his school district under a diagnosis of "other health impairment."

Eligibility Requirements and Diagnostic Criteria

5. To qualify for regional center services under the Lanterman Act, a person must show that he or she has a substantial handicap as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a "fifth category" condition closely related to intellectual disability or that requires treatment similar to that required by individuals with intellectual disability. (Welf. & Inst. Code §§ 4500 et seq.; Cal. Code Regs., tit. 17, §54000.)

6. Eligibility based on autism requires a diagnosis of autism spectrum disorder as established by criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The 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 functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

7. Eligibility under intellectual disability is also based on criteria defined in the DSM-5. These include deficits in intellectual functions (such as reasoning, problem solving, abstract learning and thinking, judgment, and learning from experience) “confirmed by both clinical assessment and individualized standardized intelligence testing”; deficits in adaptive functioning “that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility”; and the onset of these deficits occurs during the developmental period.

8. Eligibility under cerebral palsy or epilepsy requires clinical diagnosis of the condition that is substantially disabling to the individual.

9. Eligibility under the fifth category requires evidence of a substantially disabling condition closely related to intellectual disability or that requires treatment similar to that required by an individual with an intellectual disability. The fifth category does not include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (a).)

Assessments and Records Concerning Claimant

SCHOOL DISTRICT ASSESSMENT AND EDUCATIONAL PROGRAM

10. Claimant’s school district issued a multidisciplinary assessment report on December 16, 2019, when claimant was four years, 10 months old to determine the need for special education services. He was referred by his guardian and described as having “large outbursts of anger, throwing items, aggressive toward other children, anxiety, issues with impulse control, tries to hurt others, possibly oppositional.” He has

severe asthma and allergies to tree nuts and mold. He demonstrated some difficulty with food presentation. Behavior difficulties at preschool resulted in teacher changes, schedule changes, and discussions of disenrollment.

11. The assessment included a preschool classroom observation. Claimant showed fidgeting, restlessness, blurting out of information, staring off, interrupting the turns of others, and occasionally leaving the immediate area. With teacher intervention, he would briefly cooperate and then impulsively act out again. The preschool teachers reported that his two primary areas of concern were his reaction to food and peer interaction with sharing. He would throw unwanted food and tantrum. He would throw plates if a speck of water was present. He became upset if food touched. He resisted sharing with other children. He demonstrated inappropriate physical contact with adults.

12. Assessments showed his developmental functioning at the average to below average range. Speech and language functioning was not formally assessed because it was not identified as an area of concern. Academic functioning was in the average range. On social and emotional functioning assessments, his scores with anxiety problems and oppositional problems fell within the clinical range. His score with attention deficit hyperactivity problems fell within the borderline range.

13. The examiner used the Childhood Autism Rating Scale (CARS) to identify autism spectrum symptoms. His score of 25.5 placed him in the minimal to no autism symptoms range. The only concern the family expressed regarding repetitive behaviors was that he picked at his fingertips and toenails. His play with a variety of toys was indicated as functional and pretend. He showed difficulty with transitions. He was sensitive to loud noises. He did not like the sound of public toilets or dryers. Family and preschool staff described him as intelligent and quick to absorb information.

14. The assessment concluded claimant met criteria for the special education category of other health impairment.

15. Claimant's Individualized Education Program (IEP) in December 2019 described him as humorous and a fast learner. The IEP established behavior goals to improve sharing, turn-taking, requesting help from adults to solve conflict with peers, and transitioning between activities. He was placed in the school district's inclusive preschool program for four days per week.

PSYCHIATRIC EVALUATION AND TREATMENT

16. On October 1, 2019, when claimant was four, Laura Lai, M.D., Psychiatrist, issued a letter stating that claimant was seen in an outpatient psychiatric clinic with behavior difficulties due to impulsivity, emotional reactivity, and agitation. He was diagnosed with other specified impulse control disorder and symptoms consistent with attention deficit hyperactivity disorder - combined presentation. The letter also noted difficulty with transitions and separation anxiety, which have led to behavioral acting out. Dr. Lai recommended behavior therapy for management of his impulse control.

17. On August 5, 2020, Dr. Lai issued another letter indicating claimant was receiving outpatient treatment for attention deficit hyperactivity disorder- combined presentation (ADHD), autism spectrum disorder (ASD), oppositional defiant disorder, and unspecified anxiety. The letter identified "signs and symptoms consistent with Autism Spectrum Disorder," including insistence on sameness, rigidity, sensitivities, stereotypical behaviors (head-banging), and developmental delays (still cannot stool in the toilet during the day.) The letter did not provide information about standardized instruments that were used to make the ASD diagnosis.

18. Hospital records identified treatment for asthma, ear infections with tube placement, and allergies. He had a febrile seizure on one occasion. He was prescribed Focalin extended release for ADHD. A psychiatry note dated October 30, 2020, stated claimant was less irritable and less aggressive with the medication. It also noted claimant has good social interaction, very affectionate with parents, various interests, and does not appear to be concerning for autism spectrum.

PRESCHOOL BEHAVIOR REPORTS

19. Several day care reports were submitted showing claimant hit or kicked another child, scratched a child, hit preschool staff, and threw a chair.

IRC'S ASSESSMENT – ANTHONY BENIGNO, PSY.D.

20. IRC ordered a psychological assessment from a vendor, Anthony Benigno, Psy.D., Licensed Clinical Psychologist at AB Psych Consulting. Dr. Benigno performed the assessment on February 2, 2021, and issued his report February 12, 2021. Dr. Benigno's assessment included a record review, clinical interview, observations, and formal assessment tools.

21. To assess autism spectrum symptoms, Dr. Benigno used the Autism Diagnostic Observation Schedule, Second Edition, Module 2 (ADOS-2) and the Childhood Autism Rating Scale, High Functioning (CARS2-HF). During the ADOS-2, claimant demonstrated spontaneous functional play, asked the examiner for more pieces, engaged in good imaginative play and demonstrated shared enjoyment during joint play with the examiner. Dr. Benigno ranked claimant's performance as minimal to no evidence of symptoms, indicating a classification of non-spectrum. On the CARS2-HF, claimant also scored in the minimal to no symptoms range.

22. Dr. Benigno measured cognitive function using the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-IV) [*sic*]. Claimant's overall cognitive functioning was measured in the low average range. He scored borderline on the digit span and visual-spatial subtests and delayed on the visual puzzles subtest.

23. Dr. Benigno measured adaptive functioning using the Adaptive Behavior Assessment System, Third Edition (ABAS-3), Parent Form. This was a parent survey that showed claimant's adaptive functioning to be in the extremely low range.

24. Dr. Benigno concluded that claimant does not meet the diagnostic criteria for autism spectrum disorder or intellectual disability and does not have a disabling "fifth category" condition.

Expert Testimony – Sandra Brooks, Ph.D.

25. Sandra Brooks, Ph.D., is a licensed clinical psychologist on IRC staff since 2007. As part of IRC's eligibility team, she assists in reviewing records, performing assessments, and participates in eligibility review conferences. IRC's eligibility team consists of a physician, a psychologist, a program manager and a consumer services coordinator.

26. Dr. Brooks reviewed the medical and educational records, preschool behavior reports, and Dr. Benigno's report.

27. Dr. Brooks testified that there was no evidence in any of the records provided that claimant has cerebral palsy or epilepsy.

28. She agreed with Dr. Benigno's conclusion that claimant does not meet eligibility for intellectual disability because his intellectual functioning overall is in the average to low average range. Although he showed deficits in some areas, these

deficits were not severe enough to meet the criteria for a disabling intellectual disability.

29. Although the records showed some evidence of autistic-like behaviors, many of claimant's described behaviors were also inconsistent with what is often seen in children with autism spectrum disorder. Both the school district assessment and Dr. Benigno's report found no evidence of autism spectrum disorder. Dr. Brooks agreed that the records do not show that claimant meets the diagnostic criteria for autism spectrum disorder.

30. Dr. Brooks also agreed with Dr. Benigno's view that claimant did not demonstrate a fifth category condition that would support eligibility.

LEGAL CONCLUSIONS

Legal Authority

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the eligibility criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. The state of California accepts responsibility for persons with developmental disabilities and provides an array of services and supports to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code § 4501). Developmental disability is defined as a substantially disabling disability that originates before age 18, continues or can be expected to continue indefinitely, and includes the conditions intellectual disability, cerebral palsy, epilepsy, autism, and a disabling condition closely related to intellectual disability or requires treatment

similar to that required for individuals with intellectual disability. It does not include handicapping conditions that are solely physical in nature, solely psychiatric disorders, or solely learning disabilities. (Welf. & Inst. Code § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

3. Substantial disability is defined as a significant functional limitation in three or more areas of major life activity, including self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (Welf. & Inst. Code § 4512, subd. (l)(1).)

4. Developmental disability does not include handicapping conditions that are solely psychiatric disorders or social functioning that originated as a result of the psychiatric disorder or treatment for such a disorder, solely learning disabilities, or solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

5. The purpose of the Lanterman Act is 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." (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to "assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for

living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the regional centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

Evaluation

7. The information contained in claimant’s records reviewed by IRC, as well as Dr. Benigno’s and Dr. Brooks’s evaluations and opinions did not show by a preponderance of the evidence that claimant suffers from a qualifying developmental disability under any of the categories authorized by the Lanterman Act. The evidence presented by IRC established that claimant does not have a condition that makes him eligible for regional center services.

ORDER

Claimant’s appeal from IRC’s determination that he is not eligible for regional center services is denied.

DATE: March 26, 2021

ALAN R. ALVORD
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.