

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2021040380**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 18, 2021, telephonically pursuant to the ongoing COVID-19 pandemic.

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

Claimant's mother represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on May 18, 2021.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act under the categories of Autism Spectrum Disorder (autism) or Intellectual Disability?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 20-year-old woman who lives with her grandmother. Claimant's mother is her authorized representative.
2. On March 18, 2021, a multi-disciplinary team from IRC comprised of a doctor, psychologist, and program manager, met to discuss and review claimant's records. They concluded claimant suffered from various mental health conditions and her cognitive level of functioning was average, and thus, she did not qualify for regional center services under autism or intellectual disability. No evidence was submitted, and eligibility was not requested based on, any other qualifying category.
3. On March 22, 2021, IRC sent claimant's mother a Notice of Proposed Action stating that claimant 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 a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.
4. On March 29, 2021, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination.

5. On April 29, 2021, IRC and claimant's mother discussed the Fair Hearing Request telephonically, and the substance of that meeting was summarized in a letter, as follows: the parties discussed how claimant had many diagnoses over the years (such as Attention Deficit Hyperactivity Disorder [ADHD], bipolar disorder, major depressive disorder, and obsessive compulsive disorder) but never had a diagnosis of autism or intellectual disability. Claimant's mother expressed she believed claimant was misdiagnosed over the years but actually has autism. Claimant's mother must repeat things for her to keep her focused, use good hygiene, and basically perform day to day tasks. Claimant threw temper tantrums as a child and as she progressed in age, she never functioned at the age appropriate level. Following the meeting, IRC adhered to its conclusion that claimant was not eligible for regional center services.

### **Diagnostic Criteria for Autism**

6. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. 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**

7. The DSM-5 contains the diagnostic criteria used for intellectual disability. The essential features of intellectual disability are deficits in general mental abilities

and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range (unless an individual is African American, in which case IQ results are not considered). In order to have a DSM-5 diagnosis of intellectual disability, three diagnostic criteria must be met. The DSM-5 states in pertinent part as follows:

Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

[¶] . . . [¶]

Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 ( $70 \pm 5$ ). Clinical training and judgment are required to interpret test results and assess intellectual performance.

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Deficits in adaptive functioning (Criterion B) refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and socio-cultural background. Adaptive functioning involves adaptive reasoning in three domains: conceptual, social, and practical. The conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior and school and work tasks organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting general medical conditions or mental disorders influence adaptive functioning. . . .

[¶] . . . [¶]

Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the

person to perform adequately in one or more life settings at school, at work, at home, or in the community. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A.

## **Substantial Disability**

8. In addition to having a qualifying diagnosis, a person must also be substantially disabled as a result of that diagnosis in three or more areas of a major life activity, pursuant to California Code of Regulations, title 17, section 54000. These areas are: 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.

## **Expert Testimony and Claimant's Records**

9. Dr. Brooks 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 field of psychology, and in the evaluation of an individual for regional center services under the Lanterman Act and applicable regulations.

10. The following records were provided to IRC by claimant's mother: individualized education plans (IEPs) for 2017, 2018, and 2020; an IEP amendment from 2020; claimant's results on the Wechsler Independent Achievement Test, Third Edition (WIAT-3); and a 2016 Child Mental Health Assessment completed by the Department of Mental Health for the County of Riverside. Dr. Brooks reviewed all records and concluded claimant was not eligible for any further intake services or regional center services. The following is a summary of the testimony of Dr. Brooks and the records noted above.

11. February 18, 2016, Child Mental Health Assessment: According to this document, completed when claimant was 14 years old, claimant was admitted for a psychological hold after being determined to be a danger to herself or others. She had attempted to hit her mother and stepfather and they had difficulty restraining her. Claimant admitted suicidal ideations. Claimant admitted having anger problems. Claimant admitted that anxiety "comes out of nowhere" and causes her problems along with her depression. Claimant's adaptive skills and speech skills were noted to be in the normal range and she reported that she earns mostly "A's" and "B's" in school. Claimant has been suspended for physical altercations in school and used marijuana. It was also noted that during the interview, claimant was quite impulsive and easily distracted. The Child Mental Health Assessment did not contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

12. Claimant's January 4, 2017, IEP: According to this document, claimant received special education services under the categories of specific learning disability and speech and language impairment. Claimant was 15 years old (and in the ninth grade). It showed claimant was reading at the ninth-grade level and solving math



equations with an 89 percent accuracy. According to Dr. Brooks, a person with intellectual disability typically can only read at about the sixth grade level, so claimant is already performing well above a person who is intellectually disabled. Claimant would also not be able to solve math equations with such a high level of accuracy if she were intellectually disabled. Dr. Brooks noted that, by the time claimant was 15, it showed she was not consistent in taking her bipolar medication. This is clinically significant because failing to consistently take her prescribed medication can have an effect on academic performance. The IEP did not contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

13. December 14, 2017, WIAT-3: According to this document, completed when claimant was 16 and in the tenth grade, claimant's scores were scattered from average to below average among many different categories involving reading comprehension and math. Overall, she was rated average in basic reading and average in math fluency. Although the testing showed claimant has challenges academically, a person with intellectual disability typically does not have scores scattered from average to below average; rather, they have global delays consistently across all subsets. It did not contain any mention of autism, autistic-like features, or any other indications that claimant would meet the diagnostic criteria for autism or intellectual disability under the DSM-5.

14. Claimant's April 13, 2018, IEP: According to this document, completed when claimant was 17 years old and in the tenth grade, she received special education services under the categories of other health impairment and speech or language impairment. Although claimant was noted as functioning "below standard" in most areas, the performance was attributed to claimant's ADHD and severe depression (as

opposed to any developmental disability), which claimant's teachers felt significantly impacted her academic performance. Claimant's articulation, fluency, and semantic skills fell within the normal range. The IEP documented that claimant has a "lot of energy" and has trouble focusing as well as controlling her emotions. Claimant, however, told her teachers that she can – but chooses not to – pay attention in class. Claimant is able to take care of her adaptive needs independently. Nothing in this IEP shows claimant meets the diagnostic criteria for intellectual disability under the DSM-5, nor does it show she exhibits any features that are characteristic of autism.

15. Claimant's March 17, 2020, IEP: According to this document, completed when claimant was 19 years old and in the twelfth grade, claimant received special education services under the category of other health impairment and speech and language impairment. Like her previous IEP, it noted claimant's ADHD and depression severely impact her academic ability. Claimant made progress in her comprehension and math skills since the previous IEP. However, the IEP documented that claimant was pregnant and off her medication, and often has difficulty staying on task. Claimant is able to take care of her adaptive needs independently. Nothing in this IEP shows claimant meets the diagnostic criteria for intellectual disability under the DSM-5, nor does it show she exhibits any features that are characteristic of autism. An addendum to this IEP dated June 29, 2020, noted claimant often exhibited violent and aggressive behaviors, is easily annoyed, and intentionally annoys others. These behaviors are not typical of autism or intellectual disability, but are rather more likely attributable to a mental health/psychiatric condition.

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

16. Claimant's mother testified as follows: Claimant is now 20 years old and lives with her grandmother. Claimant does not work and does not go to school.

Claimant's characteristics and behaviors were always different from other "same-aged" kids as she grew up. She wishes she had known about regional center services when claimant was younger, but back then, nobody really talked about all the different possible diagnoses a person could have like they do now. Schools only do whatever the minimum possible intervention is. It is for this reason that claimant's mother only has IEPs starting in high school because that is when claimant's behaviors really started to cause major issues. Claimant's mother believes claimant is intellectually disabled but was misdiagnosed as ADHD. She also feels claimant is on the spectrum, but likely is "high functioning."

Claimant had a baby last year and her baby died. Claimant is now pregnant again. When claimant went to the doctor, one would think a person would give the doctor this important information. But, claimant does not grasp how to do that. Claimant's mother had to tell her that she needed to let the doctor know. Claimant is on "bed rest" for her pregnancy and will say she can't take a shower; claimant's mother notes, however, that a functional person would realize that being pregnant it would be important to keep hygiene up. A typical day for claimant is for her to "do nothing." She sleeps and maybe watches movies. In short, claimant simply does not have any comprehension of how to function in the real world. As claimant's mother explained, claimant "simply doesn't get it."

## **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 (department) 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>1</sup>, cerebral palsy, epilepsy,

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<sup>1</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.

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 psychosocial 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 the categories of autism or intellectual disability. The only expert who testified was Dr. Brooks. Based on the records provided, Dr. Brooks's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism or intellectual disability, and is not substantially disabled within the meaning of applicable law. Although claimant has certainly had challenges throughout her life, as evidenced by her need for special education services, she has had a wide array of non-qualifying disorders (ADHD, Major Depressive Disorder, Bipolar Disorder, Obsessive Compulsive Disorder, and anxiety), most of which are mental health conditions. Conditions of this nature are not qualifying conditions for regional center services. All of these conditions also likely interfere with her academic and intellectual ability, but that is not the same thing as having autism or intellectual disability which actually cause cognitive delay. In the most recent record detailing claimant's symptoms and challenges (Child Mental Health Assessment completed by the County of Riverside in 2016), her intellectual ability was noted to be average. Throughout the years, claimant's academic abilities were scattered between deficient and average, which would not be expected of someone who has intellectual disability. A person who is intellectually disabled, rather, would have global cognitive deficits not attributable to any other factors.

Claimant's mother loves her daughter and her testimony was heartfelt. Claimant's mother did her best to obtain as many records as she could and believes claimant may have been misdiagnosed over the years. She believes claimant is actually

"high functioning" on the autism spectrum and her concern regarding claimant's inability to function independently concerns her very much. However, even assuming claimant was misdiagnosed over the years, claimant does not meet the substantial disability criteria, which is also required to accompany a qualifying diagnosis. Moreover, if one were to ignore the non-qualifying diagnoses and focus just on documented behaviors, the records still do not establish eligibility. Claimant has never displayed persistent deficits in social communication, persistent deficits in social interaction, or restricted/repetitive and stereotyped patterns of behavior, interests, or activities, which are characteristic of autism. Though she struggles in social contexts with anger and outbursts, that is due to behaviors attributable to her other conditions, not a cognitive disability. In sum, none of claimant's IEPs show characteristics consistent with autism or intellectual disability.

Accordingly, on this record and in light of applicable law, claimant's request for regional center services must be denied.

## **ORDER**

Claimant's appeal is denied.

DATE: June 1, 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.