

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2022020774**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on March 30, 2022, via the Microsoft Teams application.

Stephanie Zermeño, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on March 30, 2022.

## **ISSUE**

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

## **FACTUAL FINDINGS**

### **Background**

1. On January 12, 2022, following claimant's request that she be made eligible for regional center services under the category of autism, a multidisciplinary team comprised of a psychologist, medical doctor, and program manager rendered a determination that claimant was not eligible for regional center services based on the documents she provided. Following that determination, IRC sent claimant a Notice of Proposed Action concluding that claimant did not qualify for regional center services under the Lanterman Act because the records submitted by claimant 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 (fifth category).

2. On February 14, 2022, IRC received claimant's fair hearing request, wherein claimant wrote the following:

I've suffered from symptoms of ADD & autism my whole life, and have been also diagnosed with Bipolar Disorder & PTSD & Generalized Anxiety. I really need the type of help IRC provides.

3. On February 28, 2022, claimant, claimant's sister, and representatives from IRC attended an informal meeting regarding claimant's eligibility request. Following the meeting, IRC adhered to its determination that claimant was not eligible for regional center services, and that based on the records claimant provided, no "intake" services were warranted.

4. On March 4, 2022, IRC sent claimant a letter memorializing what was discussed at the informal meeting. That letter stated:

Informal Meeting on Appeal

[Y]ou and your sister presented your concerns regarding difficulties that you have had in obtaining an evaluation for Autism Spectrum Disorder. Your sister explained that when you were born, Autism was not really known, and it was even more difficult to be identified in females. She recalled that when you were in school and would become overwhelmed, you would either elope to her classroom, or she would be called to come into your classroom. She stated that you would rock and fidget and block the outside world by reading and becoming engrossed in a book. She disclosed that she has a son who has Autism now and when she reflects on how you behaved when you were younger, it is very similar to how he behaves. A multidisciplinary team at IRC comprised of a psychologist, a medical doctor, and a program manager concluded claimant was not eligible for regional center services. On January 14, 2020, claimant's

mother filed a Fair Hearing Request challenging IRC's eligibility determination.

Your sister stated that you were not served in Special Education because you were doing great in reading and were great at drawing. She stated that the school told your family that you would be okay as long as your routine was not changed. You stated that you did not learn how to make a call from a payphone until you were approximately fifteen years old. You could not drive until you were almost thirty years old. You verified that you are independent in self-care skills and can cook and feed yourself. You take care of your mother and stated that you are very good at that. You can make your own medical appointments. You need assistance is filling out job applications and participating in job interviews. You tend to overexplain things. You also need to build coping mechanisms when things go wrong. Your sister stated that as a baby, you did not cry. She also stated that you did not interact with other children as a kid. She further stated that you have learned to do things by following instructions or just by watching it being done. She described various sensory issues you had as a child such as being bothered by certain clothing textures or not wanting to bathe because you did not like the feel of the washcloth or the scent of the soap.

Informal Meeting Outcome/Decision

At this time, IRC is standing by its decision that you are not eligible for regional center services. IRC has medical records from Cucamonga Valley Medical Group from June 15, 2015- July 13, 2021, and they do not note an eligible condition. The instances where behaviors are described, are not supportive of a claim of a substantially handicapping condition of ASD. The records describe you as alert, oriented, having good eye contact and clear speech, and having cognitive functioning intact. The records note medications for anxiety, bipolar disorder, and depression. These are not eligible conditions. IRC cannot provide an evaluation without records to substantiate a claim of a substantially handicapping developmental disability. This may be accomplished by way of school or medical records that describes behaviors and observations during your developmental period. You can also obtain an evaluation from a private Psychologist and submit that for consideration. Private evaluations can be costly so we urge you to explore doctors who may provide low cost or pro bono evaluations. IRC cannot fund these evaluations. . . .

5. A hearing was scheduled and a Notice of Hearing sent to claimant at her address of record. Five days prior to the hearing, IRC also e-mailed claimant IRC's evidence packet, which contained all of the evidence and witnesses IRC intended to present at the hearing as well as the date and time of the hearing. It is determined that claimant had proper notice of the date and time of the hearing.

## **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 to qualify for regional center services under the category of autism.

## **Evidence Presented at Hearing**

7. Sandra Brooks, Ph.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 field of psychology and in the assessment of individuals for regional center services under the Lanterman Act.

8. Dr. Brooks testified at the hearing. The following are findings made from Dr. Brooks's testimony and documents claimant submitted, which included: records

from her participation in the Job Corps; a medical record dated May 8, 2015; and a medical record from July 13, 2021.

9. Claimant is a 45 year-old woman. None of the three records claimant submitted document that she has ever been diagnosed with autism or exhibited characteristics/symptoms consistent with autism.

10. The Job Corps records claimant submitted show that throughout the 90s, claimant took many classes or participated in activities that were designed to help her become employed, or documented placements where claimant was actually employed, however, the records were difficult to interpret and made little sense.

11. The medical record dated May 28, 2017, indicated that claimant sought medical treatment for a mass as well as pain and numbness that claimant was experiencing in her arms. The medical history showed claimant had a previous diagnosis of anxiety disorder and bipolar disorder, but no records were included regarding those conditions. The entirety of the report pertains to the examination of the mass and medical issues claimant was experiencing in her arm and did not contain any information regarding behaviors and/or tests conducted to assess claimant for a developmental disability.

12. The medical record dated July 13, 2021, indicated that claimant sought medical treatment for "PX and lab results" It is unknown what "PX" referred to. The medical record described general lab results and noted the lump in claimant's arm. The record also contained a "depression screening" where it appeared someone may have spoken with claimant during the appointment. The record stated that claimant did not have any concerns with depression. The record did not contain any

information regarding behaviors and/or tests conducted to assess claimant for a developmental disability.

13. Claimant's records further indicated claimant is on medications designed to treat anxiety, bipolar disorder, and depression. None of these conditions are conditions that render a person eligible for regional center services.

14. Dr. Brooks concluded that the records provided did not demonstrate claimant meets the DSM-5 diagnostic criteria for autism, and even if she did, the records did not show claimant suffers from a substantial disability in three or more areas of major life activity. The records similarly did not show any basis for a regional center psychologist to conduct a psychological assessment.

## **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 Disabilities (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. Welfare and Institutions Code section 4642, subdivision (a)(1), provides that any person believed to have a developmental disability is eligible for “initial intake and assessment services” in the regional centers. Initial intake requires a decision be made regarding the need to provide an assessment, but does not require a regional perform an assessment. (*Id.* at subd. (a)(2).)

6. 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, autism, or disabling conditions found to be closely related

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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.

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."

7. 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.

8. 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**

9. Based on the records provided, Dr. Brooks's uncontroverted expert opinion was that the records did not demonstrate claimant meets the DSM-5 diagnostic criteria for autism, and even if she did, the records did not show claimant suffers from a substantial disability in three or more areas of major life activity. Claimant had the burden of proving she is eligible for regional center services. As claimant did not appear, and the records did not indicate anything that would suggest claimant meets the diagnostic criteria for autism or suffers from a substantial disability as a result of autism that manifested during her developmental period, a preponderance of the evidence did not establish that claimant is eligible for regional center services under the Lanterman Act.

## **ORDER**

Claimant's appeal is denied.

DATE: April 6, 2022

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.**