

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER

Service Agency

OAH No. 2022030460

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on April 19, 2022, due the COVID-19 pandemic.

Claimant did not appear despite receiving proper notice of the time, place, and manner of the hearing.

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

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 19, 2022.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

Background

1. On February 2, 2022, following claimant's request for regional center services, a multidisciplinary team at IRC consisting of a psychologist, medical doctor, and program manager found that claimant was not eligible for regional center services based on the documents he provided. Following that determination, IRC sent claimant on February 8, 2022, a Notice of Proposed Action advising that claimant did not have a "developmental disability" as defined by California law.

2. In a fair hearing request dated February 24, 2022, claimant wrote that at the time of claimant's application, he didn't have information from a doctor and asked that he be permitted to submit a "complete [a]pplication."

3. IRC sought to schedule an information meeting with claimant's authorized representative, but no evidence showed that claimant responded to IRC or that a more "complete application" was provided to IRC.

4. A hearing was scheduled, and a Notice of Hearing sent to claimant at his address of record. Claimant's authorized representative did not appear despite properly receiving notice of the time, place, and manner of the hearing.

Testimony of Sandra Brooks, Ph.D.

5. Sandra Brooks, Ph.D. testified at the hearing. 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 assessments and diagnoses of persons for the purpose of determining eligibility for regional center services.

6. Dr. Brooks reviewed psychological and speech assessments of claimant dated December 18, 2020, and claimant's December 18, 2020, Individualized Educational Plan (IEP). Claimant was 7 years old at the time of those assessments and attending elementary school. As part of her evaluation, Dr. Brooks applied the diagnostic criteria for autism and intellectual disability under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). Dr. Brooks also considered whether claimant may qualify for regional center services under the fifth category and considered the Association of Regional Center Agencies guidelines for determining whether claimant functions in a manner similar to that of a person with an intellectual disability or requires treatment similar to that of a person with an intellectual disability.

7. Based on her evaluation of the information regarding claimant and the criteria under the DSM-5, Dr. Brooks concluded that claimant does not qualify for regional center services under the autism, intellectual disability categories, or fifth category.

8. In reaching her conclusion, Dr. Brooks cited claimant's intellectual functioning scores as measured in the results of the psychological tests administered

to him. Dr. Brooks maintained that, overall, claimant's test performance was not consistent with an intellectual disability per the DSM-5 criteria. Specifically, Dr. Brooks noted that claimant was assessed as having average scores for "Crystallized knowledge (Oral Expression)" and "Fluid Reasoning (Conceptualization)." He was also assessed as having average scores for "Short-Term Memory" and "Long-Term Retrieval." Claimant's "Overall Intellectual Functioning" was assessed at the average range. In the areas of "Auditory/Phonological Processing" and "Visual Processing" claimant was assessed at the below average range, which Dr. Brooks said were consistent with a learning disability. A learning disability is not considered a developmental disability to qualify for regional center services.

9. Dr. Brooks also stated, in addition, based on claimant's performance on the Adaptive Behavior Assessment System - Third Edition that claimant did have significant deficits in adaptive functioning.

10. Regarding whether claimant qualifies for regional center services under the autism category, Dr. Brooks found that claimant does not meet the DSM-5 criteria for autism. She first noted that per the Gilliam Autism Rating Scale (GARS) based on the responses of claimant's parents, claimant was assessed to be in the "very likely" autism range, but Dr. Brooks did not credit this test result. She pointed out that the school psychologist, who performed the assessment, found that while claimant has some characteristics often associated with autism, a specific learning disability with an auditory processing disorder better explains claimant's academic delays. Dr. Brooks agreed with that assessment.

11. Dr. Brooks added that claimant's social behavior as documented by the speech pathologist in the speech assessment was not consistent with an autism diagnosis. She referenced that the speech pathologist observed claimant to be

“engaged with a peer who he played with, the entire time he was smiling and laughing appropriately.”

12. Dr. Brooks referenced further that claimant’s assessed pragmatic language skills were inconsistent with an autism diagnosis. This information is significant because persons with autism have significant deficits in social communication, and this information indicates claimant’s use of language is age appropriate. Claimant was able to express gratitude, respond to gratitude or refusal from a peer, greet a teacher, request to do something from a group of peers and a parent, express a polite refusal to an adult, request help from a sibling, express regret to a parent for an accident, request information from a parent, and order at a restaurant.

LEGAL CONCLUSIONS

Applicable Law

1. 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.)

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 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.)

4. 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.

5. 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.*)

6. 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;

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.

(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. “Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to the person’s age, in three or more of the following areas of major life activity: receptive and expressive language, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

8. A person may qualify for services under the fifth category in two ways: either by having a disabling condition found to be “closely related to” intellectual disability, or by having a disabling condition that requires “treatment similar to that required by persons with intellectual disability.” (§ 4512, subd. (a).) The fifth category is a legal category, not a medical or psychological diagnosis. (See for discussion of the fifth category and its application *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, and *Samantha C. v. Department of Developmental Services* (2010) 185 Cal.App.4th 1462.)

Evaluation

9. Claimant failed to prove by a preponderance of the evidence that he qualifies for regional center services under the autism, intellectual disability categories, or under the fifth category. This conclusion is reached based on Dr. Brooks’s testimony, which is based, in turn, on her careful review of the evidence of record. Dr. Brooks found that claimant does not meet the DSM-5 diagnostic criteria for autism or intellectual disability, and he does not function in a manner similar to that of a person

with an intellectual disability, or has a condition that requires treatment similar to that required for a person with an intellectual disability.

ORDER

Claimant's appeal is denied. IRC's determination that claimant is not eligible for regional center services is affirmed.

DATE: April 28, 2022

ABRAHAM M. LEVY
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.

