

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

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022030478

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 7, 2022.

Claimant represented herself at the hearing.

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

The matter was submitted on July 7, 2022.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act) based on a diagnosis of Autism Spectrum Disorder (ASD)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 36-year-old woman, who has a partner with whom she has been in a relationship for ten years. On February 28, 2022, IRC notified claimant that she was not eligible for regional center services. IRC made this decision based on records it reviewed and decided that intake services were not warranted.

2. In a fair hearing request dated March 5, 2022, claimant's partner appealed IRC's decision on her behalf and with her authorization, and this hearing followed.

3. In her fair hearing request, claimant stated the following reasons why she believes she is eligible for regional center services and the services she is seeking:

[Claimant] has been formally diagnosed with Autism and is experiencing difficulties with independent living and is in need of services.

[Claimant needs] housing assistance, therapy that specifically addresses her symptoms from Autism, life skills

and socialization and future job skill training. She needs assistance in becoming independent.

Diagnostic Criteria for Autism Spectrum Disorder

4. Official notice was taken of excerpts from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), which was referenced during the hearing and in records submitted as evidence. The DSM-5 identifies criteria for the diagnosis of Autism Spectrum Disorder (ASD). The diagnostic 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 function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of ASD during the developmental period that is substantially disabling in order to qualify for regional center services.

IRC's Evidence

5. Ruth Stacy, Psy.D., is employed by IRC as a staff psychologist and has held that position since October 2015. Dr. Stacy received her Doctor of Psychology (Psy.D.) degree from Trinity College of Graduate Studies in 2008. Her responsibilities at IRC include performing psychological assessments of children and adults for a determination of whether those individuals are eligible for services at IRC. Dr. Stacy's assessments consist of reviewing available records; administering, scoring, and interpreting test data; as well as drafting reports of her psychological assessments. In her reports, Dr. Stacy submits recommendations regarding her diagnostic conclusions

and whether those conclusions conform to the requirements of the Lanterman Act regarding eligibility for services at IRC. Dr. Stacy is part of a team of professionals at IRC who evaluate individuals for eligibility. Dr. Stacy reviewed all of the documents received into evidence and testified at this hearing. The following factual findings are based upon Dr. Stacy's testimony and documents received into evidence, which were part of IRC's record review in this matter.

6. Dr. Stacy testified that there are three main requirements for eligibility for services at IRC. First, the claimant must have a developmental disability, which is defined to include intellectual disability, cerebral palsy, epilepsy, ASD, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to intellectual disability, which are called Fifth category conditions. Second, the developmental disability must constitute a substantial disability for the individual, meaning that the individual has significant limitations in three or more areas of life skills. Finally, the developmental disability must have originated prior to the age of 18. Dr. Stacy further explained that there are certain conditions that are expressly excluded from eligibility under the Lanterman Act. Conditions specifically excluded from eligibility include: psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder; learning disabilities; and conditions that are physical in nature. Dr. Stacy stated that the eligibility team at IRC makes the determinations of eligibility for services. She further explained that psychologists, including herself, utilize the DSM-5 for diagnosing mental and developmental disorders.

7. Dr. Stacy did not perform any psychological testing on claimant for IRC's evaluation. Instead, IRC relied upon documents submitted by claimant for a records review to determine claimant's eligibility and whether further testing was needed.

Specifically, the following documents were considered and received into evidence: medical records from Charlee Family Care, Inc. dated October 14, 2016, to June 29, 2021; medical records from Riverside University Health System dated October 19, 2020, to June 29, 2021; a psychological evaluation dated February 15, 2022, from Gregory D. Crawford, Psy.D.; a psychological evaluation of claimant on May 12, 2022, by Ty Jones, Psy.D.; Social Security Administration benefit verification letter dated June 30, 2021; Social Security Operations Manual dated October 2021; and Social Security Form dated November 5, 2021.

8. Dr. Stacy's review of the medical records from Charlee Family Care, Inc. provided significant clinical information regarding claimant's mental health history for determination of whether a diagnosis of ASD for claimant is appropriate. Specifically, Dr. Stacy explained that the records show that claimant has had diagnoses of Bipolar I Disorder, depression with severe psychotic features, and Post Traumatic Stress Disorder (PTSD). The medical records also document daily alcohol use and past use of methamphetamines, which Dr. Stacy explained could decrease a person's abilities over time, cause behavioral changes, and result in brain damage. These medical records also document a history of sexual abuse, which she explained could interfere with a person's social functioning and interactions. These medical records also state that claimant "was in Youth Authority from ages 13-16 due to drugs," and "from ages 16-18 [claimant] was in a facility in Napa for drunk driving." Dr. Stacy explained that this information is clinically significant because this shows that "other things are going on," and that claimant has "skills and behaviors not seen in individuals with ASD" because this behavior shows a "higher level of social awareness."

Dr. Stacy stated that all of the symptoms listed in these medical records are behaviors and symptoms typically associated with bipolar disorder with psychotic

features and not with ASD. Dr. Stacy explained that administering tests for the diagnosis of ASD, the mental health of the individual must be taken into consideration because people with psychotic features, such as those described for claimant in these records, can get an artificially inflated score on tests used to diagnose ASD.

9. Dr. Stacy's review of the medical records from Riverside University Health System were dated from October 2020 to June 2021. These medical records indicate that claimant was seen by an internal medicine physician, who noted that claimant suffers from depression and has a prior diagnosis of schizoaffective disorder and autism disorder. Dr. Stacy explained that schizoaffective disorder is a psychiatric disorder that is a mood disorder with psychotic features. She further explained that the DSM-5 notes that schizoaffective disorder and ASD are not typically diagnosed together. Furthermore, these medical records do not provide any testing that was utilized for diagnosing ASD for claimant, and no psychiatrist records underlying the ASD diagnosis were provided. Overall, these medical records do not support a diagnosis of ASD for claimant.

10. Dr. Stacy also reviewed the report of Dr. Crawford's psychological evaluation of claimant completed on February 15, 2022. As an initial matter, Dr. Stacy explains that Dr. Crawford did not obtain claimant's medical records for review of claimant's mental health history prior to performing this evaluation. She stated that it is incredibly important to have a full understanding of the prior mental health and developmental history of claimant before a proper diagnosis can be made. Dr. Stacy notes that the report provides that claimant received her high school diploma from Napa State Hospital, which is a mental health hospital. She stated that Napa State Hospital would have performed proper testing for an ASD diagnosis for claimant if it was a suspected diagnosis, but that no such records were reviewed or have been

provided. Dr. Stacy noted that Dr. Crawford failed to mention in his report any of the previous diagnoses of schizoaffective disorder or bipolar disorder or any other mental health diagnosis that claimant previously had, which is crucial information to have. She stated that Dr. Crawford noted that claimant is distracted, and on that basis, diagnosed her with Attention Deficit Hyperactivity Disorder (ADHD). However, Dr. Stacy stated that bipolar disorder, a diagnosis previously given to claimant, causes distractibility, but Dr. Crawford did not have that information. Furthermore, ADHD was not a diagnosis previously given to claimant.

With regard to Dr. Crawford's diagnosis of ASD for claimant in this report, Dr. Crawford administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2). Additional tests administered by Dr. Crawford to claimant were: Biopsychosocial Clinical Interview with claimant; Delis-Kaplan Executive Function System (D-KEFS); Mental System Assessment-Advanced Edition (MeSA-AE); and Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV). Dr. Stacy noted that of all those tests, the ADOS-2 is the only test specifically used for the diagnosis of ASD.

With regard to the test results for the ADOS-2 provided by Dr. Crawford, Dr. Stacy explained that the scores provided by Dr. Crawford did not match Dr. Crawford's written description of claimant's behaviors, which undercuts the diagnostic usefulness of the scores. Specifically, Dr. Crawford wrote that claimant adequately expressed her thoughts, used gestures and provided life event information and conversational leads, and her "emotional gestures were developmentally appropriate." Dr. Crawford noted that claimant's reciprocal social interaction was appropriate with appropriate eye contact and facial expressions, and her social response/reciprocal communication was appropriate. However, Dr. Crawford's scoring in this section was a 2, meaning that claimant's conversational skills were seriously impaired. Dr. Crawford's description of

claimant's behaviors simply do not match the score value he provided. Dr. Stacy stated that he "scored this wrong," and such scores are not appropriate for the behavior he described.

Because Dr. Stacy believes that Dr. Crawford "overscored" the ADOS-2 test, she believes his results for a conclusion of an ASD diagnosis for claimant are incorrect. Dr. Stacy also noted other portions of Dr. Crawford's report that are inconsistent with a diagnosis of ASD. Specifically, Dr. Crawford wrote in the report that claimant has no stereotyped behaviors or restricted interests and she "displayed no abnormal behaviors." Dr. Stacy stated that in order to have an ASD diagnosis, a person must meet the criteria of deficits in the area of stereotypical behaviors, but Dr. Crawford noted that claimant has none. Dr. Crawford also noted that claimant was using gestures with appropriate eye contact and other appropriate non-verbal communication, which are inconsistent with a diagnosis of ASD. Based on these written descriptions, Dr. Stacy stated that claimant does not meet the criteria for a diagnosis of ASD.

11. Dr. Stacy also reviewed the report of psychological evaluation of claimant conducted on May 12, 2022, by Ty Jones, Psy.D. Dr. Stacy noted that the only medical or mental history information reviewed by Dr. Jones prior to his evaluation was Dr. Crawford's report discussed above. Dr. Jones noted that he administered the following tests: structured clinical interview; MicroCog; Wisconsin Card Sorting Test (WCST); Conners Continuous Performance Test 3rd Edition (Conners CPT-3); Rey-Osterrieth Complex Figure; Social Responsiveness Scale, 2nd Edition (SRS-2) Adult; Monteiro Interview Guidelines for Diagnosing the Autism Spectrum, Second Edition (MIGDAS-2); Adaptive Behavior Assessment System, Third Edition (ABAS-3); and Personality

Assessment Screener (PAS). After his evaluation Dr. Jones diagnosed claimant with the following:

- Autism Spectrum Disorder, with accompanying intellectual impairment and without accompanying language impairment, Level I requiring support.
- Attention-Deficit/Hyperactivity Disorder, Combined presentation.

Dr. Stacy noted that the SRS-2 test is a series of questions or checklists answered, here, by claimant's partner and is a subjective, rather than objective, test that is based, here, on the partner's perceptions. Dr. Stacy stated that if a person has mental health disorders, there can be elevated scores on an SRS-2 questionnaire. Additionally, the ABAS-3 is also a subjective, rather than objective, test that was completed by claimant's partner. Dr. Stacy also noted that the written description provided by Dr. Jones regarding his evaluation of claimant is not consistent with a diagnosis of ASD. For example, Dr. Jones wrote that claimant engaged in reciprocal conversation, responded to conversational prompts, had appropriate eye contact, which Dr. Stacy explains shows that claimant has conversational skills and an ability for social communication. Dr. Jones noted that claimant had a body posture and intonation that were adequate to express her experiences, which is appropriate nonverbal communication. None of these examined behaviors support a diagnosis of ASD. Dr. Stacy also stated that Dr. Jones wrote that claimant reported impaired social skills, restricted interest, stereotyped behaviors, sensory input, and poor nonverbal communication in childhood and adulthood. However, Dr. Stacy also noted that Dr. Jones provided no citation to any observed behavior that would support those statements, which were simply reported to him. Dr. Stacy explained that Dr. Jones also relied heavily on Dr. Crawford's report for his diagnoses. Dr. Stacy opined that Dr. Jones' report does not support a diagnosis of ASD for claimant.

12. Dr. Stacy also reviewed the Social Security Administration documents provided by claimant that establish that claimant receives social security benefits, and she is eligible for those benefits based on a diagnosis of depression, bipolar disorder, anxiety, obsessive compulsive disorder, and related disorders. Dr. Stacy explained that while ASD is a condition that may entitle an individual to social security benefits, claimant does not receive social security benefits under an ASD diagnosis.

13. Dr. Stacy testified that she is part of a team of individuals at IRC who review documents for determinations of eligibility for services. In this case, Dr. Stacy and two other staff psychologists at IRC reviewed the records provided by claimant to establish whether she is eligible for services. All three psychologists agreed that claimant had no indication of a developmental disability prior to the age of 18. However, claimant did have significant mental health disorders in childhood. The reports of both Dr. Crawford and Dr. Jones were internally inconsistent, and both contained written descriptions of claimant's behavior that is inconsistent with a diagnosis of ASD. Claimant does not meet the DSM-5 diagnostic criteria for a diagnosis of ASD. Looking at the totality of the records for claimant, claimant may have social deficits and anxiety, but she had no objective evidence to support an ASD diagnosis. Additionally, claimant's mental health problems, particularly combined with her drug and alcohol use in childhood, may contribute to her social deficits. However, regardless, claimant does not meet the criteria for eligibility for services from IRC under any diagnosis based on the documents provided.

Claimant's Testimony

14. Claimant is not currently employed and wants to better herself. She believes that her problems arose when she was a child and her mother never got the help for her that she needed. Claimant admitted that she did "do drugs a long time

ago,” but claims she no longer uses drugs and does not drink alcohol every day. Claimant testified that social settings are hard for her and her previous employers did not understand her situation. Claimant said she has difficulty with social interactions, completing work, and has intellectual difficulties, as well. She believes that IRC can help her to obtain and keep employment. Claimant wants to be independent, but needs assistance with budgeting, keeping her home, and getting a job. She has been in a relationship with her partner for 10 years.

15. Claimant testified that she has had a hard life. She was first hospitalized in a mental health facility when she was 18 years of age because she was “sexually assaulted and just needed a break.” Claimant “checked herself into” the mental health facility and told the facility that she was “hearing things,” but she did not actually hear things. She simply “needed a break,” and knew what to tell the hospital to allow her to stay there. Claimant spent time in group homes as a child and was bullied because she was awkward. Claimant admits that she has bipolar disorder, but believes she also has ASD and wants to access the help that IRC can provide for her.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

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 follows:

"Developmental disability" means a disability which originates before an individual attains age 18; continues, or can be expected to continue indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation,¹ 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 The regulation still uses the term "mental retardation"; the DSM-5 uses the term "intellectual disability."

(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.

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.

Evaluation

7. Claimant failed to prove by a preponderance of the evidence that she has ASD or that she otherwise qualifies for services at IRC under any diagnosis. This decision is based on the findings and opinions contained in the documents addressed above, and Dr. Stacy's uncontroverted expert testimony that claimant does not meet the requisite criteria based on her review of those documents. Dr. Stacy credibly testified that the reports of Dr. Crawford and Dr. Jones were inconsistent and provided

written descriptions of observations of claimant's behavior that is inconsistent with a diagnosis of ASD. Furthermore, neither Dr. Crawford nor Dr. Jones engaged in a comprehensive review of claimant's medical and mental history prior to their assessments. While claimant has had multiple diagnoses from her childhood to present that are psychiatric in nature, such as bipolar disorder, depression with psychotic features, and PTSD, she has not had a credible diagnosis of ASD. As Dr. Stacy explained, claimant's problems with social interactions appear to be related to her psychiatric diagnoses and long history of drug and alcohol abuse. Claimant's social problems are explained by her psychiatric diagnoses, which are specifically excluded from eligibility under the Lanterman Act.

8. Claimant was sincere and her testimony heartfelt. She is clearly motivated to obtain services that she believes are necessary to allow her to function in the world. However, claimant has the burden of proving that she is eligible for regional center services. That is, she must prove it is more likely than not that she has a qualifying developmental disability. The weight of the evidence presented at hearing did not establish that claimant is substantially disabled because of ASD, or any other qualifying condition. As such, claimant failed to satisfy her burden of demonstrating eligibility for regional center services under the Lanterman Act.

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ORDER

Claimant's appeal from Inland Regional Center's determination that she is not eligible for regional center services and supports is denied. Claimant is not eligible for regional center services.

DATE: July 20, 2022

DEBRA D. NYE-PERKINS

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.