

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2022070344

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via Zoom videoconference on January 5, 2023. IRC's representative and witnesses appeared by audio only.

Senait Teweldebrhan, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant. An interpreter had been requested to assist claimant's authorized representative, and he appeared. The interpreter was released after claimant's authorized representative failed to appear.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 5, 2023.

ISSUE

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

FACTUAL FINDINGS

Background

1. Claimant is 18 years old and currently resides with her adoptive parents.¹ Prior to age three, claimant was removed from the care of her biological parents and placed in foster care due to neglect. Claimant's biological mother was alleged to have suffered from schizophrenia, bipolar disorder, and consumed alcohol and/or drugs when pregnant with claimant. Claimant spent only a few months in her first foster home before being placed at age three into another foster home, where she lived with two biological siblings and three other foster children. Claimant's past records include allegations of sexual abuse that occurred prior to foster placement.

¹ Claimant's history was derived from several documents submitted as evidence that included a description of her historical circumstances.

2. On June 8, 2022, a multidisciplinary team comprised of a psychologist, medical doctor, and program manager reviewed claimant for eligibility and determined she did not qualify for regional center services. The team noted that although claimant received regional center services for a brief period of time prior to 2018, she was found not eligible for regional center services following a psychological re-evaluation also in 2018. The records submitted did not warrant conducting a new psychological evaluation.

3. On June 14, 2022, IRC issued a notice of proposed action denying claimant eligibility for regional center services because the intake evaluation 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 June 25, 2022, claimant's adoptive mother filed a fair hearing request seeking to have previously rendered regional center services restored. She did not specify under what category she was seeking services. However, claimant had previously received services from Harbor Regional Center under the category of autism; so, the fair hearing request is interpreted to be seeking eligibility under that category.

5. Following an informal meeting where IRC representatives discussed the fair hearing request with claimant's mother, and reviewed claimant's records, IRC adhered to its determination that claimant is not eligible for regional center services.

6. This hearing was noticed by OAH for January 5, 2022, at 1:00 p.m. at her address of record in a Notice of Continued Hearing (the original notice of hearing had also been sent to claimant at her address of record). IRC also sent communications to

claimant regarding the hearing at her address of record, the most recent being on December 29, 2022, when IRC also sent claimant's mother an exhibit packet and witness list. When the record was opened to receive evidence, neither claimant's mother nor claimant appeared. Claimant was determined to be in default, and the matter proceeded as noticed.

Diagnostic Criteria for Autism

7. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism spectrum disorder. 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 Disability²

8. The DSM-5 contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period.

² Claimant never received regional center services for intellectual disability and did not specify that she was seeking services under that category. However, regional center presented evidence on that category, so it was included.

Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

Documentary Evidence and Testimony

9. 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 degree 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 assessment of individuals for regional center services.

10. Dr. Brooks reviewed the records submitted in this case. A summary of her testimony and the records submitted are summarized below.

11. On April 20, 2007, when claimant was three years old, South Central Los Angeles Regional Center conducted a social assessment. Claimant was already in foster care and was referred to regional center by the Los Angeles Department of Children and Family Services (LA DCFS) to rule out developmental delay. Claimant was observed to be withdrawn during the assessment and rarely spoke. She was quiet but observant. Claimant engaged in eye contact without difficulty. Claimant presented as reserved and apprehensive. Claimant was reported to enjoy playing with toys but never showed excitement. Claimant was reported to be loving and affectionate but frequently

exhibited outbursts when she did not get her way. Claimant would bite people, pull her hair, and throw herself on the ground. The conclusion of the social assessment was that a psychological assessment should be conducted to rule-out intellectual disability or autism.

12. On July 18, 2007, shortly after the social assessment, a psychological assessment was conducted by Ann Walker, Ph.D., for the South Central Los Angeles Regional Center, to determine claimant's eligibility for services. A series of tests were performed, including the Wechsler Preschool and Primary Scales of Intelligence – Third Edition (WPPSI-3) and the Autism Diagnostic Inventory – Revised (ADI-R). On the WPPSI-3, claimant's non-verbal and overall cognitive intellectual skills were in the normal range. On the ADI-R, claimant was found to be in the non-autistic range. Dr. Walker diagnosed claimant with mixed receptive expressive language disorder and post-traumatic stress disorder (PTSD). After concluding claimant did not meet the diagnostic criteria for autism or any other qualifying category for regional center services, Dr. Walker explained:

[Claimant] shows a very strong startle reaction [and is] hyper-vigilant. Claimant has outbursts of anger [and] difficulty staying asleep. Claimant cannot talk about . . . the abuse but her foster mother reports that she believes [claimant] does go through periods in which [she] has "flashbacks" in which she re-experiences the physical abuse and possible sexual abuse that she suffered when living with her mother. [Claimant] also shows a restricted range of affect and seems to show unusual reaction to other's pain.

It is recommended that [claimant] be referred for a special education preschool placement. She would be very appropriate for special education preschool placement for children who show significant delays in language skills development, and who suffered from an emotional disturbance. . . .

13. On February 18, 2009, when claimant was four years old, claimant underwent a psychological-educational multidisciplinary assessment. The evaluator explained in the report that it was already difficult to measure the ability of young children accurately, but even more difficult with claimant because she expressed a preference for some tests over others. Therefore, although several measures were administered, the results were deemed only an estimation of claimant's actual ability. On the WPPSI-3, claimant's cognitive skills were determined to be in the low-average to average range. No autism-specific testing was administered. Claimant's adaptive behavior was determined to be "clinically significant." Several other measures were administered but were unremarkable. The evaluator determined claimant met the eligibility criteria for special education under the category of emotional disturbance. Claimant's ensuing special education Individualized Education Program plan (IEP) listed her qualifying category as emotional disturbance.

14. In September and October 2009, when claimant was five years old, John Stephenson, Ph.D., conducted a psychological assessment of claimant, as requested by Harbor Regional Center, because of "concerns regarding possible developmental delays." No raw data or scores were reported, rather, the assessment appeared to be mostly based on observations. During testing, claimant made noises, did not look up, and acted differently depending on the setting (her behavior changed depending on

whether she was at school or at home). Dr. Stephenson found claimant's adaptive functioning to be in the extremely low range, as per claimant's mother's ratings on the Adaptive Behavior Assessment, Second Edition. In the home environment, some repetitive play and behaviors were observed. Claimant had her head bowed during some of the testing. All efforts by Dr. Stephenson to engage claimant in interactions and testing were "not successful." Dr. Stephenson's initial impressions were of "a young girl with severe impairments . . . nonstop repetitive finger and hand movements, occasional rocking back and forth, and repetitive whimpering" Dr. Stephenson opined claimant had features of autism and gave her a diagnosis of "autistic disorder" under the DSM-4-TR, the predecessor to the DSM-5, but concluded that "claimant's symptoms might be better explained by a serious psychiatric illness that could become more apparent when she gets older." Claimant began receiving services from Harbor Regional Center as a result of her "autistic disorder" diagnosis.

15. Claimant's school district continued special education services under the category of emotional disturbance and disputed the diagnosis given by Dr. Stephenson.

16. LA DCFS also disputed Dr. Stephenson's diagnosis of autistic disorder and asked psychologists at Harbor Regional Center for a re-assessment. LA DCFS noted it was important to ascertain a correct diagnosis for purposes of actions being taken by LA DCFS. On June 24, 2010, Rita S. Eagle, Ph.D., reviewed all claimant's records to date. Dr. Eagle did not conduct another assessment, but instead noted that claimant's past history and records reflected a child who suffered severe trauma having been abused, moved to different foster homes, and her behaviors were possibly attributable to those environmental factors rather than a developmental disability. She also noted that claimant had just been moved to yet another foster

home, which would no doubt have an effect on her and make a definitive diagnosis difficult. Dr. Eagle explained that it was important, however, to have a more definitive diagnosis because the court was in the process of trying to place claimant with adoptive parents, many of whom have a strong motivation for financial gain in adopting a child with autism. Ensuring claimant has the proper diagnosis will make for better placement conditions.

17. In August and September of 2010, Giselle Crow, Psy.D., conducted a psychological assessment of claimant, in consultation with Harbor Regional Center, to ascertain a more definitive diagnosis than that given by Dr. Stephenson in order to determine continued eligibility for regional center services. Dr. Crow conducted interviews, and administered the following measures: WPPPSI-3, Vineland-2 Adaptive Behavior Scales, and the Autism Diagnostic Observation Schedule – Module Two (ADOS). Regarding claimant's scores on the WPPPSI-3, claimant had normal nonverbal intelligence, but Dr. Crow noted a significant discrepancy between her nonverbal and verbal intelligence. She opined this was more indicative of a communication disorder as opposed to autism. On the Vineland, which is a rating scale, claimant's new foster parents had not had her placed with them long enough to observe everything, so her overall adaptive functioning could not be determined. Nonetheless, Dr. Crow found deficits in adaptive functioning. On the ADOS, claimant did not meet the cutoff for an autism diagnosis. Dr. Crow diagnoses claimant with mood disorder, communication disorder, and provided rule-out diagnoses of PTSD and reactive attachment disorder.

18. No records were provided between 2010 and 2015. The next record in chronological order is an IEP dated November 9, 2015, when claimant was 11 years old. It showed claimant began receiving special education services under the category of specific learning disability.

19. Similarly, a January 17, 2017, IEP showed claimant received special educations services under the category of specific learning disability.

20. On January 31, 2017, Virginia Coyle, Psy.D., conducted a psychological evaluation of claimant, when claimant was 12 years old. Dr. Coyle administered the following measures: Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5), California Verbal Learning Test -Children’s Edition, Bender Gestalt Visual Motor Test – Second Edition, Autism Spectrum Rating Scales (parent and teacher), and Conners Comprehensive Behavioral Rating Scales (parent and teacher). Claimant’s full scale IQ score on the WISC-5 placed her in the low average range. However, there were significant discrepancies between claimant’s abilities across various domains; her deficits appeared to be specific to verbal comprehension. When significant discrepancies exist, that is not indicative of intellectual disability, which is characterized by persistent but stable deficits across all areas over time. Dr. Coyle also pointed out that because of the discrepancies, claimant’s full scale IQ score may not necessarily reflect her true level of cognitive functioning. On the Autism Spectrum Rating Scales, the parent ratings were significantly higher than the teacher ratings, and Dr. Coyle did not feel the results showed claimant would meet criteria for autism. Dr. Coyle diagnoses claimant with major depressive disorder and PTSD. She also explained that a further diagnosis of specific learning disability is warranted, however, further assessment would be needed to determine the area of impairment.

21. In August 2018, George Meza, Ph.D., conducted a psychological assessment of claimant to determine claimant’s continued eligibility for regional center services at Harbor Regional Center. Dr. Meza administered the WISC-5, Wide Range Achievement Test – Fourth Edition (WRAT-4), Adaptive Behavior Assessment Scale (ABAS), and the Autism Diagnostic Observation Schedule – Module Two (ADOS).

Claimant's scores on the cognitive tests were scattered, and included scores in the borderline range, average range, and low average range. Claimant's full-scale IQ was in the low average range. Her scores on the WRAT-4 were similarly scattered between the low range and lower extreme range. Claimant's adaptive scores were in the extremely low range and low range. On the ADOS, claimant was in the non-autistic range. Claimant was observed to have good eye contact, a social smile, diverse facial expressions, and a wide range of affect. No restricted or repetitive interests or behaviors were observed or reported. No unusual mannerisms were noted. Dr. Meza concluded claimant did not meet the diagnostic criteria for intellectual disability or autism. Dr. Meza's overall diagnostic impression was that claimant suffered from child neglect and that mental health treatment was warranted due to her previous diagnosis of PTSD.

22. Claimant moved out of Harbor Regional Center's catchment area sometime in 2020. On April 30, 2020, Harbor Regional Center notified claimant's mother that since she had moved, claimant's case at Harbor Regional Center would be closed, but she could request services at IRC.

23. Based on the above records, Dr. Brooks concluded claimant was not eligible for regional center services. Claimant's cognitive abilities were scattered, and this is not indicative of intellectual disability. Additionally, on two separate administrations of the ADOS, claimant was in the non-spectrum range. Claimant never received special education services for autism. The only diagnosis of autism was by Dr. Stephenson, however, subsequent assessments ruled-out that diagnosis. Claimant's behaviors are not consistent with autism and the records show claimant's difficulties are attributable to the neglect and abuse she may have suffered, along with other environmental factors (moving around from foster home to foster home) rather than a

developmental disability. Dr. Brooks concluded that claimant does not qualify for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted 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 Lanterman Act 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.)

2. 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. 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 retardation³, 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;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

³ 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.

(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.

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.)

Conclusion

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Brooks, and her expert opinion that claimant does not qualify for regional center services was uncontested. Dr. Brooks concluded claimant was not eligible for regional center services. Claimant's cognitive abilities were scattered, and this is not indicative of intellectual disability. Additionally, on two separate administrations of the ADOS, claimant was in the non-spectrum range. Claimant never received special education services for autism. The only diagnosis of autism was by Dr.

Stephenson, however, subsequent assessments ruled-out that diagnosis. Claimant's behaviors are not consistent with autism and the records show claimant's difficulties are attributable to the neglect and abuse she may have suffered, along with other environmental factors (moving around from foster home to foster home) rather than a developmental disability. Notably, Dr. Stephenson's evaluation was the only one in claimant's 18-year history that contained a diagnosis of autism, however, even Dr. Stephenson suggested claimant's challenges were more likely explained by psychiatric conditions that may manifest later in claimant's life. Claimant has also received a wide array of psychiatric diagnoses such as PTSD, mood disorder, and mixed receptive expressive language disorder. Claimant has also received diagnoses of communication disorder and specific learning disorder. None of these conditions qualify a person for regional center services.

9. Accordingly, a preponderance of the evidence does not support eligibility for regional center services under any qualifying category and claimant's appeal is denied.

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ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual disability, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: January 13, 2023

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.