

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2022070477

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 7, 2022, via Zoom. The parties and witnesses appeared by audio only.

Senait Teweldebrhan, 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 November 7, 2022.

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), intellectual disability, or a condition closely related intellectual disability or that requires treatment similar to a person with intellectual disability (the fifth category)?

FACTUAL FINDINGS

Background

1. Claimant is an 18 year-old man who, according to documentary evidence and testimony of his mother, has a history of multiple mental health disorders, including depression, anxiety, schizophrenia, mood disorder, attention deficit hyperactivity disorder (ADHD), and bipolar disorder.

2. Claimant has sought to become eligible for regional center services under the Lanterman Act two times preceding the fair hearing request in this matter. Those prior attempts resulted in claimant being found ineligible on August 30, 2010, and March 30, 2022.

3. On April 5, 2022, IRC issued a notice of proposed action denying claimant eligibility for regional center services 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 June 23, 2022, claimant's mother filed a fair hearing request, stating only that she was requesting a hearing because claimant has "bipolar/depression/screams yells out loud." The fair hearing request did not allege any developmental disability that would qualify claimant for regional center services under the Lanterman Act.

5. The parties held an informal meeting on July 20, 2022, to discuss the fair hearing request. Following the meeting, IRC adhered to its position that claimant was not eligible for regional center services. IRC wrote a letter to claimant's mother memorializing its position, noting that claimant has received special education services under the categories of speech and language impairment and emotional disturbance, and had been diagnosed with various mental health disorders, such as anxiety disorder and mood disorder, none of which are a basis for regional center eligibility. Further, IRC explained that although one record dated December 22, 2020, from Temecula Mental Health Services indicated a diagnosis of mild intellectual disability, the report did not contain any information regarding how that diagnosis was obtained or any assessments or testing to support that diagnosis. Finally, the letter indicated that no documentation showed claimant had ever been diagnosed with autism.

6. On July 21, 2022, the day after the informal meeting, Brian Winter, M.D., sent a one-page letter to IRC "certifying" that claimant was his patient at Children's Primary Care Medical Group, and that claimant had "been diagnosed with autism." There were no assessments, evaluations, or other diagnostic testing documentation attached to the letter showing how the diagnosis of autism was reached. The letter also did not contain any information regarding any other qualifying condition.

7. Claimant's mother submitted additional records to IRC following the informal meeting, which were reviewed by IRC. Following a review of those additional

documents, IRC maintained its position that claimant was not eligible for regional center services.

8. On August 2, 2022, a multidisciplinary team comprised of a psychologist, a medical doctor, and an IRC program manager again determined that, based on the documentation provided, claimant was not eligible for regional center services under the Lanterman Act under any qualifying category. This hearing followed.

Diagnostic Criteria for Autism

9. 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 Disability

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

Diagnostic Criteria for Fifth Category

11. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling conditions closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

12. A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person’s IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the

cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

13. In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

SUBSTANTIAL DISABILITY

14. The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: 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.

Testimony of IRC's Expert and Documentary Evidence

15. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for over 27 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. She has also had training from Western Psychological Services in the administration of the Autism Diagnostic Observation Scale (ADOS) and training from IRC in the administration of the Autism Diagnostic Interview-Revised (ADI-R). Dr. Stacy qualifies as an expert in the diagnosis of autism and intellectual disability, and in the determination of eligibility for IRC services based on autism, intellectual disability, and the fifth category.

16. 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, and specializes

in the assessment and diagnosis of persons for regional center eligibility. Dr. Brooks served as a psychological assistant at IRC from 2007 to 2009. Prior to commencing employment at IRC, Dr. Brooks 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 trained students at Loma Linda University in the Department of Psychology in how to write psychological assessments, how to properly evaluate psychological reports and test protocols, and how to correctly administer a wide variety of testing instruments relating to cognitive disabilities. Dr. Brooks was responsible for management of a \$1.6 million grant from the National Institute of Health relating to a study involving mental health and has been affiliated with several government funded research projects in the field of psychology. Dr. Brooks is an expert in the assessment of individuals for regional center services.

17. Dr. Brooks reviewed all of the documents in this matter and testified about them. The following is a summary of her testimony and pertinent parts of the documents admitted into evidence.

18. In November 2007, claimant's school district completed a psychoeducational evaluation, when claimant was just over three years old. The assessor administered the following tests: Developmental Assessment of Young Children (DAY-C), Brigance Preschool Screen-II 2 ½ year (formal), Brigance Inventory of Early Development (0-7, formal), and the Scales of Independent Behavior – Revised Early Developmental Form (SIB-R). The assessor also conducted interviews with claimant's mother and reviewed documents. According to the report, claimant interacted well with other children but did not speak. He was noncompliant with non-preferred tasks and had a short attention span.

On the DAY-C, although claimant had low scores in the areas of physical development and communication, he scored just below average or average in the areas of cognitive ability, social emotional behavior, and adaptive behavior. The report noted claimant was able to play with others, follow rules, and show pride in accomplishments.

On the two Brigance assessments, the following observations were noted: claimant greeted the assessor with good eye contact and asked to take her hand and come with her. Claimant was able to focus and handle tasks with little redirection. Claimant communicated in small phrases and made gestures and grunt-like sounds. Claimant was able to imitate a song and also imitated other children.

Another portion of the report indicated claimant qualified for special education services as a result of speech and language impairment and had been receiving group speech assistance two times per week. Overall, it was concluded claimant had below average learning ability but average adaptive and social skills, as well as below average communication skills. Because of the results, it was determined claimant should continue with special education under the category of speech and language impairment. Nothing in the report indicates claimant suffered from autism, intellectual disability, or any other regional center qualifying condition.

19. Individualized Education Program plans (IEPs) were submitted for November 7, 2007; October 29, 2008; November 3, 2010; April 15, 2011; and November 1, 2011. They all showed claimant continuously qualified for special education services under speech and language impairment as opposed to autism, intellectual disability, or any other qualifying regional center condition.

20. On August 23, 2012, a document pertaining to claimant's interim special education placement showed that he was on track to meet all the goals that had been set for him, and he still struggled with speech.

21. On March 18, 2013, claimant was suspended from school for hitting a computer, throwing a chair, hitting a student, and attempting to bang his head on the floor.

22. On August 19, 2013, claimant's school district completed a triennial assessment for special education. The assessor reviewed records, interviewed claimant's mother, and conducted multiple tests.

Claimant's academic skills in English, language arts, and math were shown to be far below basic achievement. On the Woodcock-Johnson III Tests of Achievement, claimant's scores across all categories were predominantly in the very low classification, although he showed average abilities in picture vocabulary and oral comprehension. However, on the Kaufman Assessment Battery for Children, Second Edition, which measures a person's processing and cognitive ability, claimant placed in the average range in every category except for verbal knowledge, which was below average. Similarly, on the Test of Visual Perception Skills, Third Edition, claimant scored in the average range. Notably, the assessor pointed out that claimant's best scores were in the area of complex processing and that he did "not present significant delays overall in visual processing." On the Beery Developmental Test of Visual Motor Integration, claimant scored below average. The scattered scores between the various assessments is not indicative of intellectual disability or autism or any other qualifying regional center condition, which would typically remain stable across all domains.

On the Behavior Assessment System for Children, Second Edition, which is a parent and teacher rating scale mechanism to assess claimant's status in the areas such as hyperactivity, aggression, conduct problems, anxiety, depression, somatization, and adaptive abilities, claimant scored predominantly in the average range overall, but showed "at risk" the areas of attention, anxiety, hyperactivity, and emotions.

On the Gilliam Asperger's Disorder Scale, claimant's mother's reporting placed claimant in the "high/probably" category for Asperger's disorder and claimant's teacher's reporting also placed him in that category. Asperger's disorder, however, is no longer contained in the DSM-5 and is not, in and of itself, a qualifying condition for regional center services under the Lanterman Act.

Overall, the assessor found claimant to have general intellectual abilities in the average range with some weaknesses. The assessor found claimant did not meet the criteria for special education in the area of specific learning disability, other health impairment, ADHD, or autistic-like behaviors, but did meet the criteria for special education under the category of emotional disturbance.

23. Claimant's school district completed a speech and language assessment in August and September 2013, and the assessor found claimant's speech was "intelligible and no voice, fluency, or prosody concerns were noted," even though claimant's overall language profile was significantly below normal for his chronological age. Most notably, the assessor found that claimant's "anxiety, behavior and attention appear to greatly impact his ability to focus."

24. IEPs dated September 15, 2014; May 23, 2018; and April 5, 2021; all showed claimant continuously qualified for special education services under speech

and language impairment and emotional disturbance as opposed to autism, intellectual disability, or any other qualifying regional center condition.

25. A letter dated August 1, 2022, submitted by an individual named Casey Lyon indicated that it was his or her pleasure to recommend claimant for regional center services. The letter indicated claimant's "mood regulation" was the primary reason for his need for support throughout the day, and that claimant needed a "springboard to independence." However, the letter contained no testing information, supporting documentation, or evidence about the letter writer and how that person is qualified to render such a recommendation. Based on what was written it appeared to be someone connected with claimant's day to day education expressing a personal desire for claimant to receive regional center services, without referring to eligibility criteria under the Lanterman Act and how claimant met those criteria.

26. Based on the documentary evidence, Dr. Brooks concluded claimant did not qualify for regional center services under any category.

Claimant's Mother's Testimony

27. Claimant's mother's testimony is summarized as follows: Claimant has Attention Deficit Hyperactivity Disorder (ADHD), bipolar disorder, mood swings, and schizophrenia, along with a speech impairment. He did not speak until he was almost 10 years old. Her son has "special needs" in the areas of "development and language" and needs help. She believes he is developmentally disabled because many of his testing scores are low.

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 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 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;

(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

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.

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.)

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 was therefore uncontested. Based on the records provided, neither the school district nor any psychologist who completed an assessment ever suspected intellectual disability or autism as the cause of claimant's educational difficulties. To the contrary, claimant has always been served in special education in the area of speech and language impairment, and at times, other health impairment and emotional disturbance. Claimant also has an extensive history of mental health disorders, gleaned through documentary evidence and testimony, which include bipolar disorder, schizophrenia, mood disorder, depression, anxiety, and ADHD. As a few of the assessments noted, these disorders likely interfere with claimant's ability to perform well at school. The only hint of autism in the records was a one-page letter purportedly sent by claimant's doctor that stated claimant has autism, but no supporting documentation was provided with that letter and claimant's behaviors throughout the records are not consistent with the DSM-5 criteria pertaining to autism. Claimant's cognitive abilities also vary throughout the records ranging from low to average, which is not consistent with a person who is intellectually disabled.

Finally, there was insufficient testimony or documentary evidence that showed claimant is substantially disabled in three or more areas of a major life activity, so, even if claimant were to be found eligible under the fifth category, which the evidence did not support, the record similarly did not support a finding he is substantially disabled as a result of a condition closely related intellectual disability or that requires treatment similar to a person with intellectual disability.

Accordingly, a preponderance of the evidence does not support eligibility for regional center services under autism, intellectual disability or the fifth category, and claimant's appeal is denied.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that is the result of intellectual disability, autism, the fifth category, epilepsy, or cerebral palsy.

DATE: November 15, 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.