

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2022070478

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter remotely using the Zoom application, on August 23, 2022.

Stephanie Zermeno, 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 August 23, 2022.

ISSUE

Is claimant eligible for regional center services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of autism spectrum disorder (autism)?

FACTUAL FINDINGS

Background

1. On December 13, 2021, claimant, a 7-year-old girl, underwent a comprehensive in-person psychological assessment at Gunn Psychological Services, Inc., conducted by Glenda Ramos, Psy.D., who diagnosed claimant with autism, anxiety disorder, and "attention and concentration deficit." Thereafter, claimant's mother sought regional center services for her daughter.

2. On April 29, 2022, at IRC's request, Veronica A. Ramirez, Psy.D., conducted a psychological assessment of claimant. Following Dr. Ramirez's assessment, she determined while claimant met "some symptoms associated with" autism, she did not meet the full criteria for a diagnosis of autism, and therefore, was not eligible for regional center services under the category of autism.

3. On June 3, 2022, IRC issued a notice of proposed action indicating that, following its intake evaluation, it determined claimant was not eligible for regional center services under the category of autism.

4. On June 23, 2022, a multidisciplinary team at regional center comprised of Dr. Ramirez, a medical doctor, and a senior intake counselor, issued an eligibility

determination indicating claimant was not eligible for regional center services under any qualifying category based on the two assessments noted above, and other documentation provided.

5. On June 29, 2022, claimant's mother filed a fair hearing request seeking reconsideration of IRC's denial. In her request, claimant's mother took issue with the psychological assessment conducted by IRC's psychologist being completed via videoconference, and noted claimant had a diagnosis of autism.

6. On August 8, 2022, claimant's mother met telephonically with representatives from IRC to discuss the fair hearing request. Following the informal meeting, IRC adhered to its determination that claimant was not eligible for regional center services under the category of autism. This hearing followed.

Diagnostic Criteria for Autism

7. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Documentary Evidence

8. On December 9, 2021, Dr. Ramos conducted a comprehensive in-person psychological assessment of claimant that included the following measures: a structured clinical interview; clinical observation; the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-4); the Berry-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (Berry VMI); the Autism Diagnostic Observation Schedule, Second Edition Module 3, modified (ADOS-2); the Adaptive Behavior Assessment System, Third Edition (ABAS-3); the Behavior Assessment System for Children, Third Edition, Preschool version (BASC-3); the Social Responsiveness Scale, Second Edition, School Age (SRS-2); and the Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF-2).

On the WPPSI-4, which tests intellectual ability, claimant's scores were scattered across domains, spread approximately equally among the average and low average range. Overall, her scores placed her in the low average range of functioning.

On the Berry VMI, which tests a child's ability to integrate a visual perception with a fine motor response, claimant scored in the average range.

On the ABAS-3, which tests the relative strength of behaviors necessary to succeed at home, claimant's scores were scattered consistently in the "extremely low" range, except for practical use of the community, which was in the "borderline" range.

On the BASC-3, which assesses a child or adolescent's behavior and emotional functioning at home, claimant's scores were scattered among the "at risk" category, the "clinical significant" category, "acceptable," and "within normal limits." Overall, claimant's raw score placed her in the "elevated" range, which is slightly above normal limits.

On the SRS-2, which tests the various dimensions of interpersonal behavior, claimant scored in the severe range.

On the BRIEF-2, which tests executive functioning skills, claimant scored a global composite of "clinically elevated."

The ADOS-2 is a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials for individuals suspected of having autism. According to the report, claimant was permitted to complete the test in the presence of her parents, "more than typical physical distancing and the examiner wearing a face mask." The ADOS-2 was not scored due to minimal data supporting the validity of the ADOS-2 under the conditions. As a result, the examiner interpreted the scores with caution. Thus, only the behaviors observed during the test were reported as follows: claimant's language was composed of complex sentences; she spoke in a "halted" fashion; she was observed not to engage in echolalia; claimant rarely offered information about herself but responded to the examiner's prompts; claimant did not engage the examiner in spontaneous reciprocal social conversation; claimant did not ask the examiner for information about herself and often ignored the examiner; claimant's eye contact was well-modulated; claimant engaged in a social smile; claimant enjoyed watching the examiner play but rarely integrated herself in the play; claimant was able to label several emotions; claimant engaged in well-developed imaginative play skills; claimant did not demonstrate any unusual sensory interests; claimant exhibited some mild repetitive rocking movements in her chair; claimant did not demonstrate any restricted interests or compulsions; claimant did well with transitions between activities; claimant did not display any tantrums or self-injurious behaviors; and claimant was "appropriately active" during the testing.

Based on the above, Dr. Ramos concluded claimant's "social behavior, communication, and play skills . . . meets diagnostic criteria for [autism] without an intellectual impairment." She also diagnosed claimant with autism, anxiety disorder (unspecified), and "attention and concentration deficit" (monitor over time to rule out attention deficit hyperactivity disorder).

9. On February 15, 2022, an intake counselor at IRC conducted a social assessment. The social assessment contained the following information:

COMMUNICATION: Claimant speaks in short phrases, but she does not verbalize her needs and wants. She points and leads by the hand to communicate. She does not respond to questions most of the time. Parents share that she echoes the questions or does not respond. She follows simple instructions. She asks questions that are off topic repeatedly. She repeats words out of context. She makes cat noises and dog noises repeatedly.

Social/Emotional: Claimant shows little or no interest in people. She does not engage with family. She is aloof at home. She prefers to play alone or on her tablet. She does not seek the company of others. She does not respond to greetings or reciprocal social interaction. She fails to engage in create or imaginative play. She avoids eye contact. She does not understand humor or jokes. She does not smile appropriately.

CHALLENGING BEHAVIORS: Disruptive behaviors: Claimant has extreme reactions to loud noises including loud voices, laughs and loud environments.

Emotional outbursts: She temper tantrums when told to stop doing something she enjoys. She screams, cries, drops to the floor kicks her feet and throws objects. She responds by stating I hate you and sticking out her tongue.

Self-harm: None reported.

[¶] . . . [¶]

Unusual Behaviors: [Claimant] becomes upset when routines are changed. She insists on doing things the same way each time. She lines objects in a row and gets upset if her order is disrupted. She insists on keeping certain objects in a certain order. She likes to watch videos of things spinning on you tube. She spins and paces in patterns.

PHYSICAL AND SOCIAL ENVIRONMENT: School: [Claimant is enrolled [in the first grade] and being evaluated at school for special education services. She has difficulty staying focused and completing her tasks.

Community and Social Life: [Claimant] participates in community outings for errands and entertainment with her family at least once a week but not every day.

The conclusion of the social assessment was that IRC evaluate claimant for possible autism.

10. On April 29, 2022, Dr. Ramirez, at the request of IRC, evaluated claimant for regional center eligibility. Dr. Ramirez did not assess claimant in person, rather, she did so via videoconference. In Dr. Ramirez's report, she indicated the assessment "was conducted "via tele-psychological services due to the COVID-19 pandemic and the need for social distancing measures." However, it is noted that Dr. Ramirez did not cite any specific health orders, state or otherwise, in effect at the time of the assessment that mandated "social distancing measures." Indeed, IRC psychologists and contract psychologists have been conducting in-person assessments on a regular basis throughout the entire pandemic without issue.

Dr. Ramirez interviewed claimant's parents, conducted a "file review," made "observations," and administered the Vineland Adaptive Behavior Scale, Third Edition (Vineland-3) and the Childhood Autism Rating Scale, Second Edition (CARS-2). She also wrote in her report that "portions" of the ADOS-2 were utilized for "observational purposes only."

During the clinical interview, Dr. Ramirez learned claimant sees a psychiatrist once a month, attends 12 hours per week of applied behavioral analysis (ABA), and that claimant "did not qualify" for special education services.

On the CARS-2, which assesses whether a person is likely to meet the criteria for autism, claimant scored a 27, which placed her in the minimal to no symptoms range. The test was administered via video while her father was present. At the commencement of the testing, claimant was on medication, and she exhibited behaviors consistent with autism. As her medication wore off, claimant became more

social. Nonetheless, Dr. Ramirez wrote that claimant's symptoms/behaviors were "insufficient to warrant an [autism] diagnosis."

On the Vineland-3, which tests adaptive behavioral skills, claimant's father completed the scales and claimant scored within the low range on all adaptive domains; however, Dr. Ramirez noted her scores were "low to due to behavioral issues such as defiance and irritability anytime she is asked to do something."

Dr. Ramirez did not administer any cognitive tests "due to the barriers associated with cognitive testing via tele-psychological services/video conferencing."

Dr. Ramirez diagnosed claimant with disruptive mood dysregulation disorder and anxiety disorder, unspecified. She recommended that claimant receive treatment to address behavioral concerns and then be re-evaluated to rule-out autism.

Testimony of Holly A. Miller-Sabouhi, Psy.D.

11. Dr. Miller-Sabouhi is a staff psychologist at IRC. Dr. Miller-Sabouhi holds a Ph.D. in psychology, a master of science degree in psychology, and a bachelor of arts in psychology. She has been a licensed psychologist since 2013. As a staff psychologist at IRC, a position she has held since 2016, Dr. Miller-Sabouhi conducts psychological evaluations of children, adolescents, and adults to determine eligibility for regional center services under the Lanterman Act. Prior to serving as a staff psychologist at IRC, Dr. Miller-Sabouhi worked as a clinical psychologist and clinical supervisor in different settings, where she conducted psychological evaluations of individuals, engaged in psychotherapy and family therapy services to adults and children, and conducted both counseling and trainings in the field of mental health services, among other things. Dr. Miller-Sabouhi has published in a peer-reviewed journal and received awards during her pre-doctoral study. Dr. Miller-Sabouhi is an expert in the field of psychology, and

specifically, in the assessment of individuals for regional center services under the Lanterman Act.

Dr. Miller Sabouhi reviewed the above-referenced reports and concluded that the documentation did not show claimant was eligible for regional center services for multiple reasons: 1) claimant's presentation varies across settings (i.e. worse in school but not as bad at home); 2) there were some reports of behaviors by parents never observed by evaluators; 3) claimant showed some difficulties in social interaction but based on records it is not clear that these deficits occur across multiple settings or if they are so significant in nature such that they are causing functional limitations; 4) claimant is not receiving special education and the criteria for special education is less stringent than regional center eligibility criteria; 5) no concerns regarding autistic-like behaviors were found to be present in the school setting that were impairing claimant's ability to learn; and 6) there are other conditions that may be present or which may be affecting claimant that more easily explain any challenges she may have (for example, ADHD, anxiety, and others). As Dr. Miller-Sabouhi explained, claimant's problems at home are likely attributable to something other than autism, since autism symptoms would be present and consistent across all settings, which is not the case here. Thus, claimant does not meet the diagnostic criteria for autism and the records do not show claimant has a substantial disability.

Claimant's Mother's Testimony

12. Claimant's mother did not have much to say about anything substantive to this matter, however, she testified in a very emotional tone that she has tried very hard to get help for her daughter. Claimant's behaviors at home make her "very high risk" but because claimant "is behaving well" at school, the school will not place her in special education or provide any services. Claimant has received therapy and

medications, but “all the doors are closing” to get help for her daughter and everything about the process “is unjust.”

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state’s responsibility for persons with developmental disabilities and the state’s duty to establish services for those individuals.

2. The Department of Developmental Services 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 intellectual disability¹, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

(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

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.

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 intellectual disability, 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 intellectual disability.”

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. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

Evaluation

8. A person must have both a qualifying condition and a substantial disability (significant functional limitations in three or more areas of a major life activity) attributable to a qualifying condition to be found eligible for regional center services under the Lanterman Act. In other words, if the evidence does not establish that claimant has autism and has significant functional limitations in three or more areas of a major life activity as appropriate for a child of her age, claimant is not eligible for regional center services.

9. Although the psychological assessment completed by Dr. Ramos was much more comprehensive than that of Dr. Ramirez, Dr. Ramos did not do the full ADOS-2 evaluation which would have been very helpful in determining whether

claimant met the diagnostic criteria for autism. Indeed, some of the behaviors noted by Dr. Ramos are indicative of autism. However, the ADOS-2 was designed to be administered in a standardized manner and, here, it was not. In reading Dr. Ramos's psychological assessment report, it was unclear how Dr. Ramos ended up with a diagnosis of autism because the diagnosis did not match most of the behaviors described in the report.

10. Dr. Ramirez's report, which came to a different conclusion was similarly problematic. Dr. Ramirez only met with claimant via video. This assessment occurred in April of 2022, and no health orders or other mandates were cited to support forgoing an in-person assessment. Indeed, psychologists have been conducting in-person assessments throughout the pandemic. Here, claimant is a very young child. According to records, claimant has challenges such as anxiety and attention deficits. Placing claimant in front of a computer, which often alters the way individuals would normally interact with each other, is simply not an appropriate way to assess a 7-year-old behaviorally and/or attention-challenged child for regional center services. Although it is recognized that over the past two years COVID-19 has changed the manner in which many professions conduct business, when assessing a person for regional center services under the Lanterman Act, a proper in-person psychological assessment is a necessity. Only administering part of a test or completely forgoing certain tests that would be crucial to help the evaluator make an informed decision "because of social distancing" is simply unacceptable. Many protocols can, and have, been successfully used over the past few years (i.e. face masks or clear face shields for those who cannot tolerate masks) so that business of all kinds can be conducted in-person. Accordingly, Dr. Ramirez's report and conclusions, though considered, were given little weight.

11. That said, insufficient evidence demonstrated that claimant meets the diagnostic criteria for autism. As Dr. Miller-Sabouhi noted, most compelling is the fact that claimant's behaviors at school are different than they are at home, and claimant does not meet the criteria for special education, which has less stringent standards than regional center eligibility. Even claimant's mother acknowledged that claimant behaves well at school, but not at home. As Dr. Miller-Sabouhi explained, this means claimant's problems at home are likely attributable to something other than autism, since autism symptoms would be present and consistent across all settings.

12. Simply put, a preponderance of the evidence did not demonstrate that claimant, at present, meets the DSM-5 diagnostic criteria for autism or is substantially disabled in three or more areas of a major life activity as appropriate for her age.

ORDER

Claimant's appeal from Inland Regional Center's determination that she is not eligible for services based on being substantially disabled as a result of autism spectrum disorder is denied. Claimant is not eligible for regional center services.

DATE: September 1, 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.