

**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. 2022080299**

**DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on September 8, 2022.

Claimant's adoptive mother, who is also claimant's biological grandmother, represented claimant.

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

The matter was submitted on September 8, 2022.

## **ISSUE**

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

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 23-year-old man who previously received services beginning in 2006 when he was seven years of age from the East Los Angeles Regional Center (ELARC) based on provisional eligibility of ASD with the recommendation that claimant be reassessed for his eligibility on the diagnosis of ASD after two years. In 2007 claimant's case was transferred to IRC because his family relocated to IRC's catchment area. In 2010, claimant was reassessed by IRC for a determination of eligibility on the basis of ASD and found to not be eligible for services. In 2013, claimant again applied for services with IRC on the basis of ASD, and he was assessed by another psychologist from IRC and found to not be eligible for services. Claimant appealed that 2013 decision, a hearing was held, and a decision was issued by OAH upholding IRC's decision that claimant was not eligible for services. In 2022 claimant again applied for services from IRC on the basis of ASD. On July 13, 2022, IRC notified claimant that he 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 July 28, 2022, claimant's adoptive mother appealed IRC's decision and this hearing followed.

3. In his fair hearing request, claimant stated the following reasons why he is eligible for regional center services:

[Claimant] has a diagnosis of autism spectrum disorder, and has records of autism dating back from before he was 18. He is severely impacted by his diagnosis, and needs intensive prompting and assistance with self-care, self-direction, capacity for independent living, economic self-sufficiency, language, safety, and learning.

4. By letter dated August 25, 2022, IRC provided a summary to claimant of an informal meeting with claimant's adoptive mother held on August 18, 2022. The letter summarized that the issue at hand is whether claimant is eligible for regional center services due to ASD. The letter noted that IRC is standing by its decision that claimant is not eligible for regional center services based up IRC's review of records, which review did not warrant further testing or establish evidence of eligibility based upon ASD.

### **Diagnostic Criteria for Autism Spectrum Disorder**

5. 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 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 that is substantially disabling in order to qualify for regional center services.

## **IRC's Evidence**

6. 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.

7. Dr. Stacy testified that there are three main requirements for eligibility for regional center services under the Lanterman Act. First, 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 that require treatment similar to intellectual disability (fifth category). Second, the developmental disability must constitute a substantial disability for the individual, meaning that the individual has significant limitations in three of

more areas of a major life activity, as defined by applicable law. 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. These excluded conditions 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.

8. Dr. Stacy did not perform any psychological testing on claimant for IRC's evaluation. Instead, IRC relied upon a substantial number of documents, both from the regional centers and 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: a psychoeducational report dated June 21, 2006, from El Rancho Unified School District; a psychosocial assessment dated July 20, 2006, from ELARC; a psychological evaluation from Roberto DeCandia, Ph.D. of ELARC dated July 20, 2006; the ELARC eligibility determination document dated September 6, 2006; a psychologist Record Review summary dated September 12, 2006, from ELARC; IRC eligibility determination dated January 4, 2007; a psychological assessment from Edward G. Frey, Ph.D. of IRC dated January 13, 2010; an eligibility determination document from IRC dated March 20, 2012; a psychoeducational evaluation dated March 8, 2012, from Chino Valley Unified School District; Social Assessment Updated dated April 29, 2013, from IRC; a medical evaluation dated August 6, 2013, from IRC; a psychological assessment dated August 5, 2013, and October 4, 2013, from IRC; an eligibility determination from IRC dated October 25, 2013; a decision from the Office of Administrative Hearings dated April 7,

2014; a psychological/psychiatric summary dated January 10, 2017, from the Department of Children & Family Services; a psychoeducational evaluation dated January 30, 2018, from Chino Valley Unified School District; an Individualized Education Program (IEP) document dated January 30, 2018, from West End SELPA; IRC's eligibility determination dated October 24, 2018; IRC's eligibility determination dated December 1, 2021; a psychological evaluation report dated June 20, 2022, from Gunn Psychological Services; and IRC's eligibility determination dated July 13, 2022.

9. Dr. Stacy's review of the psychoeducational report dated June 21, 2006, from El Rancho Unified School District showed that claimant, at the age of seven, underwent testing for a determination of whether he was eligible for special education services. Dr. Stacy explained that while various tests were administered, the Gilliam Autism Rating Scale (GARS) with the parent as respondent and also the teacher as respondent was given to determine if claimant had a probability of the presence of ASD. The parent completed the questionnaire, and the teacher also completed the questionnaire for this test. Dr. Stacy stated that the total score for the (GARS) was 77, which "indicates a low probability of the presence of Autism Disorder." She also noted that the teacher's information provided an overall score of 83, which "indicates a below average probability of the presence of Autism Disorder." The ultimate outcome of this assessment was that claimant was determined to be eligible for special education services under the category of autism "based on criteria established by state regulations." Dr. Stacy stressed that there is a significant difference between the criteria for eligibility for special education services than that for eligibility for regional center services, with regional center criteria being significantly more stringent.

10. Dr. Stacy's review of the July 20, 2006, psychological evaluation conducted by Robert DeCandia, Ph.D. of ELARC to determine claimant's eligibility for

regional center services showed that Dr. DeCandia performed a number of various tests of claimant for determination of a diagnosis of ASD, including the Childhood Autism Rating Scale (CARS), and the Vineland Adaptive Behavior Scales. Dr. Stacy explained that the results of the Childhood Autism Rating Scale (CARS) showed that claimant's score was 26, which is below the cut off for a diagnosis of ASD and is indicative of minimum to no symptoms of ASD. The results of the Vineland Adaptive Behavior Scales showed that claimant was in the borderline range for a diagnosis of ASD, with "mild adaptive deficits." The overall outcome of Dr. DeCandia's assessment was a provisional diagnosis of ASD for claimant making claimant eligible for regional center services, but with the caveat that claimant should be reassessed for eligibility in two years. Dr. DeCandia wrote in the report that, "in order to diagnose with caution the diagnosis should be considered on a Provisional basis so that it can be reviewed for validity in two years time." Dr. Stacy explained that a provisional diagnosis is given when a person has a sub-clinical presentation, as did claimant in this assessment, and does not meet the required criteria, but the benefit of the doubt is given to the person with the recommendation to review again in a couple of years.

11. The reassessment of claimant for eligibility for regional center services pursuant to Dr. DeCandia's recommendation occurred on January 13, 2010, which was four years after Dr. DeCandia's assessment. Edward G. Frey, Ph.D. conducted the psychological assessment on that date and conducted various tests, including the Test of Nonverbal Intelligence -III (TONI-III), and the GARS. The results of the TONI-III showed that claimant functioned nonverbally in the average range. The results of the GARS showed that the probability of autism for claimant was unlikely. Dr. Frey also provided his observations of claimant during his assessment, and Dr. Frey wrote that claimant "may [have] some slight autistic like characteristics remaining but they appear to be at a subclinical level." Dr. Frey concluded that claimant did not meet the DSM

diagnostic criteria for a diagnosis of ASD, and as a result claimant was no longer eligible for regional center services.

12. Dr. Stacy also noted that the March 20, 2012, eligibility determination by IRC for claimant found that claimant was not eligible for services under any diagnosis. The notes on that document provide:

Cog. skills in average range. "Possible" Asperger's per scores but not served under "Aut" in special ed. Regular ed. w/ processing deficits. Found not DD by Dr. Frey in 1/13/10.

13. Dr. Stacy also reviewed the psychoeducational evaluation of claimant dated March 8, 2012, from Chino Valley Unified School District. She explained that Dr. Frey's report was not reviewed as part of this assessment, but a previous psychoeducational assessment dated April 2, 2009, was reviewed and that assessment provided the CARS with the results showing that claimant was "non-autistic." For the March 8, 2012, assessment various tests were administered including Wechsler Scale of Intelligence-IV, the Asperger Syndrome Diagnostic Scale, Woodcock Johnson Tests of Achievement-III, Social Responsibilities Scale, and BASC-2 – teacher, parent and self-reports. The CARS test was not administered as part of the March 8, 2012, assessment.

Dr. Stacy explained that the CARS test is a better instrument for diagnosis of ASD than are the Asperger Syndrome Diagnostic Scale and the other tests administered as part of the March 8, 2012, assessment. Dr. Stacy explained that the scores obtained from testing in the March 8, 2012, report show that claimant was in the "possible ASD range" on the Asperger's Syndrome Diagnostic Scale, and the social responsiveness scale showed results in the "mild to moderate range for ASD." Dr. Stacy also explained that the scores for these tests can also be influenced by other mental



health conditions such as anxiety, which can artificially inflate the scores. She also noted that portions of the report provided that claimant "has anxiety about his school performance and how he is perceived by others." Dr. Stacy testified that this observation is important because claimant's concern about how others perceive him is not a characteristic of ASD and indicates social awareness, which is not seen in individuals with ASD. She also noted that anxiety is a serious concern for claimant and affects all aspects of his life, including his school performance. Ultimately the outcome of the March 8, 2012, assessment of claimant was to conclude that he qualifies for special education services under the category of specific learning disability. The school psychologist also noted that claimant "continues to have behaviors typical of children with high functioning Autism." However, Dr. Stacy noted that the school psychologist did not make any diagnosis of claimant.

14. Dr. Stacy also reviewed the medical evaluation of claimant dated August 6, 2013, from IRC wherein claimant was given a medical evaluation from physicians at Loma Linda University to determine if claimant qualifies for regional center services under a diagnosis of epilepsy or cerebral palsy. Dr. Stacy noted that the physician reported that claimant was previously diagnosed with Tourette Syndrome, which is a neurological disorder characterized by motor and vocal tics, noises such as grunts, and repetitive movements. Dr. Stacy explained that there are similarities between ASD and Tourette Syndrome because involuntary movements associated with Tourette Syndrome can easily be confused with the repetitive and stereotypical movements associated with ASD. Tourette Syndrome is a medical condition and not a qualifying condition for regional center services.

15. The next document reviewed by Dr. Stacy was the psychological assessment conducted by Paul Greenwald, Ph.D. dated August 5, 2013, and October 4,

2013, on behalf of IRC for a determination of regional center eligibility on the basis of ASD. Dr. Stacy explained that Dr. Greenwald reviewed all available records at that time as part of his assessment, and he conducted various tests, including the CARS, the Autism Diagnostic Observation Schedule – 2nd edition (ADOS-2), and the Vineland-II Adaptive Behavior Scale. Dr. Greenwald also followed up with school visits to observe claimant. Dr. Stacy explained that the ADOS-2 test is considered the “gold standard” for diagnosis of ASD. The results of Dr. Greenwald’s tests show that the result of the CARS tests was 26, which is in the non-autistic range. With regard to the ADOS-2 test results, the overall score was 10, which is within the autism range with severity of symptoms as moderate. However, Dr. Greenwald explained in his report that the ADOS-2 algorithm in this case appeared to be artificially inflating claimant’s score because claimant had depressive symptoms, including depressed mood and psychomotor retardation. Dr. Greenwald specifically wrote in his report that while ADOS-2 is the “gold standard” for observational ASD assessment, claimant’s behaviors and answers were inconsistent with a diagnosis of ASD. Specifically, Dr. Greenwald wrote:

Inconsistent with ASD were [claimant’s] insightful responses to ADOS-2 questions regarding his own and others’ emotions revealed introspection and sophisticated insight not anticipated among persons with Autism. While the history reveals a childhood onset of repetitive movements continuing to the present, these are predominantly unilateral facial and vocal tics, not the more bilateral hand and finger movements typically encountered among children with ASD (the latter were never observed in the current assessment, including Spectrum Academy

observation). The waxing and waning course of these symptoms, including in the weeks leading to and during the course of assessment, are not typical for ASD.

Dr. Greenwald also noted that claimant's Vineland-II ratings for Daily Living Skills and especially in Socialization Indices showed significant declines approaching two standard deviations, which he noted "suggesting an acute course of decline in these functions, inconsistent with developmental (ASD) etiology. Dr. Greenwald ultimately concluded that claimant did not have a diagnosis of ASD and did not meet eligibility criteria for regional center services.

16. Dr. Stacy also reviewed the documents provided by claimant from Casa Colina Centers for Rehabilitation (Casa Colina) regarding a Comprehensive Independent Evaluation of claimant dated December 2013. Dr. Stacy noted that for this assessment, neither Dr. Frey's nor Dr. Greenwald's assessments were reviewed. A number of tests were administered to claimant as part of this evaluation, including the Adaptive Behavioral Assessment System, 2nd edition (ABAS-II), GARS, 2nd edition (GARS-2), Social Responsiveness Scale, and Woodcock-Johnson Tests.

Dr. Stacy explained that the results of many of the tests showed a drastic discrepancy between the results as reported by claimant's parent and those reported by claimant's teacher. Specifically, the Social Responsiveness Scale results show the responses reported by claimant's parent placed claimant in the "severe" range showing autism, but the teacher responses placed claimant in the "normal" range showing no autism. Furthermore, the results of the ABAS-II for claimant also shows drastically different results between reports of claimant's parent and reports of claimant's teacher. The parent's scores for claimant's activities of daily life were in the extremely low range, including scores so low that they would correspond to an individual with

intellectual disability, which claimant does not have. The teacher's scores were in the average range, which again conflicts with the scores of the parent. Additionally, the results of the GARS-2 also showed drastically different results between claimant's parent's reports and those of claimant's teacher. Specifically, claimant's parent's overall score was in the "very likely" range for ASD, whereas the teacher's overall score was in the "unlikely" range for ASD. Dr. Stacy stated this is significant because it shows that claimant's behavior may be different in different settings, which is something inconsistent with a diagnosis of ASD. She noted that in order to meet the diagnostic criteria for ASD, a person must show consistent behavior across all domains.

Additionally, the Casa Colina report also notes that claimant has shown "a decline of functioning from previous levels that, at least in part, may be more consistent with an underlying health condition." Dr. Stacy explained that a person with ASD does not have a decline of functioning from previous assessments. She explained that claimant clearly has "other things going on," including mental health issues and anxiety that impede claimant's progress in life.

17. Dr. Stacy also reviewed the January 30, 2018, psychoeducational evaluation of claimant for the Chino Valley Unified School District. This report made no reference of previous records reviewed for the evaluation. This evaluation included various testing, including the Autism Spectrum Rating Scales (ASRS) from parents and teacher, and Behavioral Assessment System for Child, 3rd edition. The ASRS results provided were only from the teacher assessment and showed a total score of 70, which is a "very elevated score" indicating ASD. Dr. Stacy testified that the background portion of this report also provides detail regarding claimant's other mental health diagnoses and symptoms, which it is noted cause claimant from making progress academically, and the mental and physical health symptoms "make it difficult for him

to attend school in a traditional setting.” Dr. Stacy stated that this observation is significant because even if claimant has a diagnosis of ASD, which Dr. Stacy disputes, it is apparent from this report that the cause of claimant’s dysfunction is other mental and physical health issues. She stated that in order to be eligible for regional center services, the claimant must not only have a diagnosis of ASD, but that diagnosis must be the cause of his disfunction creating a substantial disability. Dr. Stacy stated that this report infers that claimant’s “real problem is his mental health that is interfering with his abilities at school.”

18. The most recent assessment of claimant is the Gunn Psychological Evaluation dated June 20, 2022, for an evaluation conducted on June 16, 2022, which Dr. Stacy reviewed and discussed at hearing. She noted that there were no previous evaluations of claimant reviewed for this report. The tests administered as part of this evaluation include the ADOS-2 module 4, Social Responsiveness Scale, second edition, the ABAS-III, and Social Communication Questionnaire. Dr. Stacy noted that the ADOS-2 test administered for this evaluation was done while claimant was wearing a facial mask for COVID-19 precautions. She explained that the test publishers for the ADOS-2 test provide that the test is not standardized for using face masks and you should not perform the test if masks are used because the test involves lots of nuances like facial expressions and things you cannot see if a mask is used. Dr. Stacy stated that if you do perform the ADOS-2 test while masks are being used, then “at best you don’t report the scores because the test is not standardized.” Furthermore, Dr. Stacy also noted that the report provided that claimant “had marked anxiety,” and was very anxious during the assessment, which she explained could artificially inflate the ADOS scores. The test scores obtained from the ADOS-2 showed claimant to be in the autism range.

With regard to the Social Responsiveness Score from the June 16, 2022, evaluation, the total score was 85, which falls into the severe range for ASD. Dr. Stacy also pointed out that with regard to this score, the report itself points out that such scores can be seen with people who have obsessive-compulsive disorder (OCD), anxiety disorders, and other mental health disorders. She explained that claimant's score in this test likely reflects those mental health disorders he suffers from, specifically anxiety. The report also provides with regard to this score as follows:

Individuals in this range may fall into the proposed DSM-5 diagnosis of Social Communication Disorder if they do not meet full diagnostic medical criteria for an autism spectrum disorder.

Dr. Stacy testified the psychologist that evaluated claimant for the June 16, 2022, evaluation also diagnosed claimant with ASD, generalized anxiety disorder, and persistent (chronic) motor disorder. Additionally, the report noted that OCD should be ruled out as a diagnosis, which she explained means that this is a possible diagnosis that needs further investigation. Dr. Stacy explained that the psychologist who gave these diagnoses did not review the entire history of claimant and did not take into account how claimant's anxiety affects his test scores and utilized ADOS-2 scores that were not standardized because claimant was wearing a mask. For all of these reasons, Dr. Stacy stated that she would have come to a different result with regard to the ASD diagnosis in this report.

Dr. Stacy also noted that the ABAS-III results were from information exclusively from claimant's parent and measure adaptive skills. The scores reported for this test were extremely low and in the range for individuals with intellectual disabilities and who are completely non-verbal, and claimant is not. These scores on the ABAS-III are

in direct contradiction to the scores of the Weschler Adult Intelligence Scale (WAIS), which has scores in the average range. She explained that it is essentially impossible for claimant to have such low ABAS-III scores if his WAIS scores are in the average range.

19. Dr. Stacy also reviewed an adult transition intake report provided by claimant from the California Autism Network for claimant. She noted that the document had no diagnostic testing of claimant for a diagnosis of ASD, and no diagnostic testing for any developmental disorder. She stated that nothing in the document supported a finding that claimant has a substantial disability due to a qualifying diagnosis.

20. Dr. Stacy testified that after reviewing all of the documents provided, it is her opinion that claimant does not meet the eligibility criteria for regional center services on the basis of ASD. She also stated that claimant does not have any qualifying diagnosis to receive regional center services. Dr. Stacy stated that claimant does not meet the DSM-5 criteria for a diagnosis of ASD. She stressed that multiple psychologists for IRC, specifically three different staff psychologists, reviewed all the records and all found that claimant was not eligible for services. She stressed that claimant has a very long history of anxiety and other diagnoses including Tourette Syndrome and OCD that creates a set of difficulties for claimant. She believes that claimant has a substantial disability, but it is not as a result of ASD and is instead a result of his other diagnoses.

### **Claimant's Adoptive Mother's Testimony**

21. Claimant's adoptive mother, and biological grandmother, adopted claimant in 2005 when he was five or six years of age. During the time claimant was

receiving services from ELARC and IRC, he was doing well. After he was denied eligibility in 2010, claimant was merely managing but not thriving. The few years that claimant went without IRC services impacted him greatly in a negative way. When she appealed IRC's decision to deny claimant's services in 2013, she presented a psychological evaluation of claimant at that time showing that claimant had a diagnosis of ASD. However, she believes that because the "gold standard" ADOS test was not provided in that evaluation claimant was again found to be not eligible for services. Claimant's adoptive mother stressed in her testimony that multiple psychologists have diagnosed claimant with ASD, and she has resubmitted this information to IRC multiple times, to no avail.

22. Claimant's adoptive mother explained that she obtained the recent psychological assessment of claimant from June 20, 2022, which diagnosed claimant with ASD, as another attempt to obtain regional center services for claimant. She stated he still suffers from ASD as an adult and needs IRC services to assist him in transitioning to adulthood. Claimant currently receives psychotherapy services related to his anxiety disorder and ASD from Gunn Psychological Services.

23. Claimant's adoptive mother also testified that in an effort to get help for claimant to make him more independent and self-sufficient, she signed claimant up in 2021 for a program with the California Autism Network for transitioning adults to become more independent. She started claimant in this program because she could not get any help from IRC.

24. Claimant's adoptive mother is deeply concerned about claimant's transition to adulthood and his ability to take care of himself after claimant's adoptive parents, also his biological grandparents, have passed away. She stated that she does not want claimant to end up homeless or as a statistic because he did not have the



skills or abilities to take care of himself. This is her main goal and reason for her appeal to obtain regional center services.

### **Testimony of Amanda Backer**

25. Amanda Backer is currently employed as the Director of the California Autism Network, a position she has held for the past three years. Prior to this position, she worked for the Riverside County Office of Education in a program for transitional services for adults with ASD, a position she held for 15 years. Ms. Backer has known claimant for approximately one year since he became enrolled in the California Autism Network transition program.

26. Ms. Backer noted that claimant's adoptive parents pay privately for the services of California Autism Network because they do not have funding from IRC for the program. Ms. Backer stated that with regard to the intake form for the program, which was discussed briefly during Dr. Stacy's testimony, this was a form she completed based on her experience. She stated when she interviewed claimant for that intake, she used a checklist for underlying characteristics of high functioning autism. Ms. Backer admits that she is not a psychologist and does not diagnose ASD. She utilized the form for the purpose of identifying claimant's goals and identify areas of need for him. Ms. Backer stated that her observations of claimant over the past year have shown her that claimant is intelligent, and he speaks fluently. She stated that it is difficult to "see the patterns" until you get to know claimant and find out where he has delays. She stated that claimant is definitely impacted by ASD, but she admitted that a lot of his presentation can be confused with Tourette Syndrome, OCD, and other mental health diagnoses he has.

27. Ms. Backer also stated that claimant is severely impacted in the areas of self-care, language, learning ability, mobility, self-direction, capacity for independent living, and economic self-sufficiency. She stated that claimant has difficulty with executive functioning, making decisions, and short-term memory. Claimant also has processing delays for his language and requires about three to ten seconds to process and respond to questions asked. She stated that claimant is very literal and has extreme anxiety in verbal communication. He also shows repeated motor movement while under stress.

## **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.)

### **Applicable Statutes and Regulations**

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,<sup>1</sup> 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

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<sup>1</sup> The regulation still uses the term "mental retardation"; the DSM-5 uses the term "intellectual disability."

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 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.

## **Evaluation**

7. Claimant failed to prove by a preponderance of the evidence that he has ASD or that he qualifies for services at IRC. 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 claimant suffers from multiple mental and physical health issues, including anxiety, Tourette Syndrome, possibly OCD, and other issues that create a substantial disability for claimant. However, that substantial disability is not the result of a diagnosis of ASD. Dr. Stacy credibly explained each of the documents reviewed and the reasoning for her conclusion that claimant is not properly diagnosed with ASD, and that even if he has ASD (a fact she disputes) that his substantial disability is not the result of the ASD. As a result he does not meet the eligibility criteria for regional center services.

8. Ms. Baker's testimony regarding her assessment of claimant as having the characteristics of high functioning autism is not a diagnosis of a licensed psychologist. Ms. Baker also admitted that she is not qualified to make such a diagnosis of claimant. While she credibly testified about the issues claimant suffers and his adaptive abilities, as Dr. Stacy explained most of those issues and disabilities are explained by claimant's other mental and physical health diagnoses.

9. Claimant's adoptive mother clearly has the best interest of claimant at heart. Her credible testimony regarding her concerns about claimant's future and ability to care for himself was sincere and heartfelt. She is clearly motivated to obtain services for claimant that she believes are necessary for him to function in the world. However, claimant has the burden of proving that he is eligible for regional center services. That is, he must prove it is more likely than not that he has a qualifying developmental disability and is substantially disabled because of it. 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 his burden of demonstrating eligibility for regional center services under the Lanterman Act.

## **ORDER**

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

DATE: September 22, 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.