

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022080344

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings State of California, heard this matter on December 1, 2022, via telephone and videoconference.

Stephanie Zermeño, Fair Hearing Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

No one appeared at the hearing on claimant's behalf.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on December 1, 2022.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of autism, an intellectual disability, or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category"), that constitutes a substantial disability?

CASE SUMMARY

IRC established that claimant is not eligible for regional center services as a result of autism, an intellectual disability, or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category"), that constitutes a substantial disability.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 28, 2022, IRC notified claimant that he was not eligible for regional center services because he does not have a disability that qualifies him to receive such services.

2. On May 2, 2022, claimant's foster parent filed a fair hearing request and provided the following reason for the request: "Child needs services and high school is in agreement. Social worker is also in agreement and have [sic] applied several times."

3. On December 1, 2022, the record was opened, jurisdictional documents were presented, and documentary evidence and sworn testimony were received from IRC. No appearance was made by or on claimant's behalf, despite the service of all required jurisdictional notices and other documents. Despite claimant's failure to appear, this matter proceeded on the merits, at IRC's request, as required pursuant to Welfare and Institutions Code section 4712, subdivision (a). That subdivision requires a hearing to be held within 50 days of the date a claimant's fair hearing request is filed unless good cause is found to continue the matter. Here, no good cause was presented to continue the hearing. Following the presentation of the evidence, the record was closed and the matter was submitted.

Applicable Diagnostic Criteria

AUTISM SPECTRUM DISORDER

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) contains the diagnostic criteria used for Autism Spectrum Disorder (ASD), as follows: persistent deficits in social communication and social interaction across multiple contexts, manifested by deficits in social-emotional reciprocity, nonverbal communication behaviors, and developing, maintaining, and understanding relationships; 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 functioning; and disturbances that are not better explained by intellectual disability or global developmental delay.

INTELLECTUAL DISABILITY

5. The DSM-5 also provides three diagnostic criteria that must be met to support a diagnosis of Intellectual Disability: deficits in intellectual functions (such as reasoning, problem solving, abstract learning and thinking, judgment, and learning from experience) “confirmed by both clinical assessment and individualized standardized intelligence testing”; deficits in adaptive functioning “that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility”; and the onset of these deficits during the developmental period.

ATTENTION-DEFICIT/HYPERACTIVITY DISORDER (ADHD)

6. The DSM-5 provides diagnostic criteria for ADHD which includes a persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development characterized by inattention or hyperactivity and impulsivity. ADHD is not a regional center qualifying diagnosis.

Testimony of Dr. Miller-Sabouhi

7. Dr. Miller-Sabouhi is a staff psychologist at IRC. She holds a Ph.D. in psychology, a master of science degree in psychology, and a bachelor of arts in psychology. Dr. Miller-Sabouhi has been a licensed psychologist since 2013. Her duties as a staff psychologist at IRC, a position she has held since 2016, include reviewing records and conducting assessments to assist IRC’s eligibility team to determine if potential clients are eligible for services. Dr. Miller-Sabouhi reviewed claimant’s records in this matter.

8. Dr. Miller-Sabouhi testified that in order to be eligible for regional center services under the Lanterman Act, claimant must have a developmental disability of

autism, epilepsy, cerebral palsy, intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that for individuals with an intellectual disability (fifth category), originating before claimant attains 18 years of age and that continues, or is expected to continue, indefinitely and constitutes a substantial disability for claimant. In order to determine whether a diagnosis of a developmental disability is substantially disabling so as to qualify for regional center services, there must be significant functional limitations in at least three of the seven life activities listed in California Code of Regulations, section 54001, which are self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. Specifically excluded are learning disabilities and disorders that are solely psychiatric or solely physical.

9. Claimant's school district provides special education services under Title 5,¹ whereas regional centers are governed by Title 17.² Title 5 criteria are far less stringent than the criteria for receiving services from the regional center under Title 17. Claimant is eligible to receive special education services on the basis of a primary disability of "other health impairment."

REVIEW OF CLAIMANT'S PREVIOUS ASSESSMENTS AND RECORDS

10. A Preschool Psycho-Educational Assessment was conducted on November 13, 2008, when claimant was four years old. Claimant was referred by his

¹ California Code of Regulations, Title 5, section 3030.

² California Code of Regulations, Title 17, section 54000 et. seq.

doctor regarding speech and language concerns. Claimant's mother also had concerns with claimant's hyperactivity, his difficulty staying on task, and that he was not aware of danger.

11. Three assessments were conducted. The Preschool Team Assessment Experimental III (PTA-III) was administered to evaluate cognitive ability in verbal and nonverbal areas. Overall, claimant's verbal and nonverbal skills appeared to fall below the average range overall. His general ability was lower than expectation for his age.

In the Developmental Profile II (DP-II) assessment, claimant's academic age appeared at 30 months overall, compared to his chronological age of 46 months. When observed and assessed in a school setting, claimant had difficulty maintaining focus. Once seated, he was able to maintain his focus for two to three minutes at a time. He was able to maintain appropriate eye contact with the examiner, he did not display any aggressive behaviors, and he responded well to prompting. Overall, claimant appeared to have below age-appropriate self-help and adaptive behavior skills.

The Childhood Autism Rating Scale (CARS) was administered. Although claimant displayed some behaviors similar to children diagnosed with autism, he did not have stereotyped, repetitive behaviors, resistance to change, or abnormal body use or sensory responses. Based on parent report and observations at the assessment, claimant attained a score in the "non-autistic" range, which suggests he does not meet the criteria for autism.

In general, claimant demonstrated below age general ability, which suggested developmental delay. He was referred for an Individualized Education Program (IEP) for determination of services.

12. On August 8, 2011, a Psychological Evaluation was conducted by clinical psychologist Gabrielle du Verglas, Ph.D. Claimant was six and a half years old. His intake counselor requested assessment of his cognitive and adaptive functioning and determination as to possible cognitive delays and symptoms of ASD.

Claimant was removed from his mother's care and his paternal aunt has been caring for him since he was six weeks of age. His biological father has a diagnosis of bipolar disorder. The evaluation stated that "symptoms of ADHD had always been present." These symptoms were severe, requiring him to wear a harness when out in the community. Thus far, he had not been on medication, except for the medications listed below when he was an inpatient.

Claimant's cognitive abilities were assessed with the Wechsler Preschool and Primary Scale of Intelligence (WPPSI-III) test. The WPPSI-II measures two primary domains – verbal skills and visual motor skills. Claimant's language skills were in the average range. This is not indicative of an intellectual disability. His verbal IQ and performance IQ were found to be in the borderline range.

The Vineland Adaptive Behavior Scale (VABS) assesses functioning in the domains of communication, daily living skills, socialization, and motor skills, and is widely used to assess for the deficits in adaptive behavior which are associated with autism and intellectual disability. Results of this assessment showed that claimant's adaptive skills were a little lower than his IQ skills, but his overall composite was in the low range. The evaluator concluded that claimant met a diagnosis for "ADHD-severe." Claimant did not meet a diagnosis for autism, his symptoms were likely related to ADHD.

13. On September 12, 2011, claimant was admitted to an acute psychiatric hospital. His primary diagnosis was Axis I: disruptive behavior disorder. An initial treatment plan included individual and group therapy. Claimant was prescribed Risperdal and Tenex during treatment.

14. On November 14, 2013, a Psychological Assessment was conducted by Rebecca R. Holtzman, Psy.D., for potential diagnoses of intellectual disability and/or developmental disability to determine eligibility claimant's current level of functioning in order to assist in the eligibility process for regional center services. Claimant was currently being prescribed Risperdal, Tenex, and Adderall. He receives mental health and psychiatric services. He receives special education services under the eligibility criteria of other health impairments.

Three assessments were conducted. The results of the Vineland Adaptive Behavior Scale-II (VABS-II) indicate that claimant's overall adaptive functioning fell within the moderately low range, his communication skills fell within the adequate range, and socialization skills and daily living skills fell within the moderately low range.

The Wechsler Intelligence Scale for Children-4th Edition (WISC-IV) is an intelligence test for children ages 6 to 16 years. Claimant obtained a Verbal Comprehension Score of 89 and Working Memory Score of 89, which shows strengths in these areas. His Perceptual Reasoning Score of 57 and Processing Speed Score of 68 reflected weakness. The mean for the composite scores is 100, with a standard deviation of 15. The results of the WISC-IV indicate that claimant's overall cognitive ability as measured in the extremely low range. Because there was a significant difference amongst his scale scores, Dr. Holtzman believed the full-scale IQ should be interpreted with caution.

The Childhood Autism Rating Scale-Second Edition (CARS-2) was administered. The CARS-2 helps to identify children (two years and older) with autism and distinguish them from developmentally handicapped children who are not autistic. In addition, it distinguishes between mild-to-moderate and severe autism. On the CARS-2, claimant received a total score of 20, which is within the minimal-to-no symptoms of ASD score range.

Dr. Holtzman concluded that these scores did not meet the autism criteria - there was no quality impairment and no restrictive behaviors. There was no intellectual disability. The results indicated ADHD or a learning disability. He displayed some repetitive motor movements, but these were attributed to ADHD or boredom.

15. On October 5, 2016, a Psycho-Educational Assessment was conducted by the Los Angeles Unified School District (LAUSD) to assist the IEP team in their decision regarding claimant's eligibility for special education services. Claimant's teacher noted that claimant presents with extreme hyperactivity, inattention, off-task behavior, difficulty sustaining attention for more than a few minutes at a time, and is said to be restless, fidgety, and squirmy. These behaviors are not consistent with a diagnosis of autism.

The Cognitive Assessment System, 2nd Edition (CAS-2) was administered. This test measures cognitive processes that are deemed to be the basic building blocks of intellectual functioning. Claimant met the criteria for specific learning disability. Results of evaluation indicated that claimant has a diagnosis of ADHD, is currently on medication support, and continues to exhibit a heightened alertness to environmental stimuli that adversely affects his educational performance.

CLAIMANT'S INTAKE APPLICATIONS

16. On September 13, 2011, in response to claimant's intake application, South Central Los Angeles Regional Center's (SCLARC's) Interdisciplinary Team determined that claimant was not eligible for regional center services "due to an ineligible condition (not a developmentally disabled condition)." Claimant submitted a second intake application, and on March 25, 2014, SCLARC's Interdisciplinary Team again determined that claimant was not eligible for regional center services.

17. On February 17, 2022, in response to claimant's intake application, IRC's Eligibility Team determined that claimant was not eligible for regional center services.

LEGAL CONCLUSION

Burden of Proof

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

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Statutes

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

4. 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.

5. 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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

6. Welfare and Institutions Code section 4512, subdivision (l)(1), defines "substantial disability" as:

. . . the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

(a) 'Developmental Disability' means a disability that is attributable to mental retardation, 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 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.

Appellate Authority

8. The purpose of the Lanterman Act is 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." (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

9. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to "assist persons with developmental disabilities and their families

in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

Evaluation

10. The information contained in claimant’s records reviewed by IRC, as well as Dr. Miller-Sabouhi’s evaluation of claimant, did not show by a preponderance of the evidence that claimant suffers from a qualifying developmental disability, including ASD. The evidence presented by IRC established that claimant does not have a condition that makes him eligible for regional center services. Claimant failed to appear and present any evidence to support his contention that he is eligible for regional center services. Therefore, claimant failed to meet his burden of proof to establish that he is eligible to receive services under the Lanterman Act.

ORDER

Claimant’s appeal from IRC’s determination that he is not eligible for regional center services is denied. Claimant is not eligible for regional center services.

DATE: December 12, 2022

MARION J. VOMHOF

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.