

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2022090039

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by Zoom videoconference on December 21, 2022. The parties and witnesses appeared by audio only.

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

There was no appearance by or on behalf of claimant.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 21, 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) or intellectual disability?

FACTUAL FINDINGS

Background

CLAIMANT'S HISTORY AND RECORDS

1. Pertinent documentary evidence is summarized as follows: Claimant is a 19-year-old man with a history of multiple health problems. He has undergone many surgeries and hospitalizations.
2. Claimant received Early Start services due to a language delay, but was determined to be ineligible for services under the Lanterman Act when he turned three years old. Claimant's mother did not appeal the denial of regional center services because she was focused on claimant's health conditions.
3. Claimant's first evaluation for special education services occurred in 2015, when he was 11 years old. He was found eligible for special education services, but his Individualized Education Programs (IEPs) prior to 2018 were not submitted.
4. A speech and language evaluation was conducted in January and February 2018, when claimant was 14 years old. It showed claimant was a "kind, polite, and respectful" child. Claimant was able to ask questions, answer and comment successfully using appropriate language skills, and he met his speech and language

goals for the 2018 school year. Claimant expressed a desire to terminate speech therapy. The clinical impressions and recommendations of the evaluator indicated claimant was able to “communicate his needs, wants, and ideas.” Claimant’s articulation skills were within normal limits, and he showed average language abilities in all areas. Claimant had a deficit in “one-word expression and comprehension.” The conclusion of the evaluation was for claimant to exit speech and language therapy and for the IEP team to discuss alternative options for speech and language services.

5. In a 2018 Multidisciplinary Team Assessment Report, claimant’s teacher expressed that claimant was a “great kid” who volunteered and participated in class, and who also was “very capable” of doing the required work; however, claimant missed class on a frequent bases due to health issues that affected his overall performance. The report also indicated that claimant’s mother expressed concern that claimant’s health conditions were impacting claimant’s academic progress.

Multiple cognitive assessments were administered, including the Kaufman Assessment Battery for Children – Second Edition, which showed claimant’s cognitive ability to range from below average to average among the different subtests. On the Woodcock-Johnson IV Tests of Achievement, claimant’s performance was similarly scattered, showing that he functioned significantly below expectancy levels in the area of reading comprehension, but reading ability overall was an area of strength. Claimant’s problem solving skills in math were better developed than his comprehension skills. Claimant fell in the below average range for oral expression and listening comprehension.

Similarly, on the Behavior Assessment System for Children, Third Edition (BASC-3), an adaptive assessment, claimant’s scores (per teacher rating) were extremely scattered between at risk and the clinically significant range, but overall, mostly within

the average range of adaptive functioning. Claimant's mother rated him mostly in the average range of adaptive functioning, with a few categories noted as being at risk. Claimant rated himself as average in every category.

The report also showed claimant's grades in 2017 were mostly "A's" and "B's." In 2018, his grades dropped markedly, and were mostly "F's."

The report concluded claimant's nonverbal intellectual functioning was in the high end of the below average range but also that there was a "severe" discrepancy between ability and achievement in the area of reading comprehension. Claimant was noted to having auditory processing deficits in both auditory and sensory motor integration. The evaluator recommended claimant continue to be eligible for special education under the category of specific learning disability, as claimant's deficits were not attributable to intellectual disability, environmental deprivation, economic disadvantage, cultural differences, or his English-speaking status. No concerns were noted regarding autism.

6. A February 8, 2018, IEP that followed the above-referenced 2018 Multidisciplinary Team Assessment, created when claimant was 14 years old, showed claimant continued to be eligible for special education services under the categories of specific learning disability and speech or language impairment. The IEP noted several physical and health struggles that were impacting claimant's academic progress.

7. In March 2021, when claimant was 17 years old, he was diagnosed with bipolar disorder and schizophrenia. Thereafter, claimant's performance on both cognitive and adaptive assessments, as well as his general academic performance, declined significantly.

8. On April 21 and 22, 2021, claimant's school conducted a psycho-educational assessment. On the Wechsler Adult Intelligence Scale, Fourth Edition, which measures cognitive abilities, claimant's scores were generally very low. On the Kaufman Brief Intelligence Test, Second Edition, which measures verbal and nonverbal intelligence, claimant's scores were in the lower extreme range. Claimant also experienced challenges in his adaptive behaviors on three different measures. The Gilliam Autism Rating Scale (GARS), Third Edition, was administered. The GARS, which was completed by claimant's parent, showed the probability of autism to be "very likely." The Autism Diagnostic Observation Scale, Second Edition (ADOS-2), was not administered.

9. On March 4, 2022, as part of his triennial assessment for special education when claimant was 18 years old, the school psychologist administered the following battery of tests: Behavior Assessment System for Children, Third Edition (Parent) (BASC 3P), Behavior Assessment System for Children, Third Edition (Student) (BASC 3S), Vineland Adaptive Rating Scales, Conners Comprehensive Rating Scale, Children's Depression Inventory-Second Edition (CDI-2) (Self), Multidimensional Anxiety Scale (MASC) (Parent), Wechsler Individual Achievement Test-Fourth Edition (WIAT-4), Wide Range Assessment of Memory and Learning-2nd Edition, Test of Auditory Processing Skills – Fourth Edition (TAPS-4), Wechsler Adult Intelligence Scale – Fifth (WISC-5), Kaufman Battery for Children-Second Edition (KABC-2), Beery Buktenica Developmental Test of Visual Perception– Sixth Edition (Beery-V), Beery Buktenica Developmental Test of Sensory Motor– Sixth Edition (Beery-S), and a comprehensive test of phonological processing.

The BASC 3P is a behavioral assessment provided to claimant's parent, in this case his mother, to rate adaptive behaviors. Claimant's mother's responses placed claimant in the "at risk" range for adaptive behaviors.

The Vineland Adaptive Rating Scales which measures adaptive skills based on reporting by a certain individual, in this case claimant's mother. Claimant scored in the "low range" based on his mothers' reporting.

The WIAT-4 measures academic achievement. For reading comprehension, claimant was in the low average range. For reading fluency, claimant was in the deficient range. For mathematics, claimant was in the deficient range. For mathematics fluency, claimant was in the low range. For written expression, claimant was within the low range. For oral language, claimant was within the deficient range. The school psychologist noted that claimant struggled to remember all the directions for each subtest and very often stared away from the exam. Claimant showed difficulty with short-term memory and that inattention impacted his scores. Claimant often got up from the table and walked off. Overall, claimant remained very quiet during the assessment and provided "minimal responses" to the presented questions.

The TAPS-4 is an individually administered assessment designed to provide information about language processing and comprehension. The school psychologist presented claimant with several subtests required to attain overall scores in auditory processing. However, claimant did not respond to any of the subtests and remained quiet throughout the entire assessment. The school psychologist made several attempts at positive reinforcement to get claimant to participate, but claimant remained quiet. Eventually claimant got up from the table and began pacing without saying anything. The TAPS-4 could not be completed.

The WISC-5 measures intellectual ability across seven subtests. Claimant's full-scale IQ score was 50, or within the deficient range.

The KABC-2 measures long-term memory retrieval. The school psychologist attempted on two occasions to complete the assessment but claimant refused to participate.

The Beery-V is a perceptual motor ability test that measures hand-eye coordination and fine motor skills. Because claimant could not complete the test in the three-minute required time frame, a standardized score could not be obtained.

The BASC 3S, Conners Comprehensive Rating Scale, CDI-2, Beery-S, and MASC, were sent to claimant via e-mail on at least six separate occasions in an attempt to complete these assessments. Claimant did not respond.

The examiner concluded claimant met the criteria for special education services for other health impairment and intellectual disability due to his "low cognitive functioning, deficits in adaptive behaviors, and developmental delays."

10. On March 25, 2022, when claimant was 18 years old, the school found claimant eligible for special education services under the categories of intellectual disability and other health impairment. The IEP noted that claimant had "significant physical and mental health concerns." The IEP also stated claimant was eligible for special education under the category of speech and language impairment due to his "expressive and receptive language" deficits.

11. Jose Ruben Romero San Luis, who indicated he was claimant's doctor, wrote a letter in Spanish regarding claimant, translated to English, on April 1, 2022. In the letter, Dr. Romero San Luis stated claimant had many different medical problems

and was “slow” in literacy. He also stated claimant had behavioral problems; low self-esteem; was easily distracted; possibly had hearing loss; and likely had many things that affected his academic abilities such as attention deficit hyperactivity disorder, Asperger’s Syndrome, anxiety, depression, intellectual disability, schizophrenia, and bipolar disorder. The letter was only one paragraph and provided no data to support the claims in the letter.

12. There was no evidence presented that claimant, *prior* to the age of 18, ever received special education services under the categories of autism or intellectual disability.

JURISDICTIONAL MATTERS

13. On April 21, 2021, a multidisciplinary team comprised of a psychologist, medical doctor, and program manager reviewed claimant for eligibility and determined he did not qualify for regional center services. Claimant’s mother submitted additional records.

14. On April 27, 2022, a second multidisciplinary met to consider both the original records submitted as well as additional records claimant’s mother provided. The team concluded claimant did not meet eligibility for regional center services because the records submitted did not evidence a developmental disability prior to the age of 18, and the decline in cognitive functioning between age 17 and 18 were likely attributable to claimant’s psychiatric diagnoses of schizophrenia and bipolar disorder.

15. On July 11, 2022, IRC issued a notice of proposed action denying claimant eligibility for regional center services because the intake evaluation completed by IRC, which included review of the above-referenced documents and

other records, 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.

16. On July 29, 2022, claimant's mother filed a fair hearing request alleging claimant had been "diagnosed as autistic, having intellectual disability and learning disability."

17. On September 20, 2022, claimant's mother and IRC representatives held an informal meeting to discuss claimant's fair hearing request. Following the meeting, IRC sent claimant's mother a letter memorializing their position. The letter noted that there was a significant discrepancy between the 2018 Multidisciplinary Team Assessment Report and the 2022 Psychoeducational Assessment, which is not consistent with a diagnosis of intellectual disability. IRC also noted that in between those two assessments, claimant was diagnosed with schizophrenia and bipolar disorder, which likely were contributing factors to the decline in functioning. Finally, IRC noted that no records provided showed claimant was diagnosed with autism or intellectual disability during the developmental period (prior to the age of 18). IRC adhered to its determination that claimant was not eligible for regional center services.

18. This hearing followed.

Diagnostic Criteria for Autism

19. 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

20. 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.

Testimony of IRC's Expert

21. 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.

22. Dr. Miller-Sabouhi reviewed the records mentioned above and testified at the hearing. Her opinion is summarized as follows: The records demonstrate claimant received special education services for speech and language impairment and specific learning disability during his developmental years. After claimant was diagnosed with schizophrenia and bipolar disorder in March of 2021 at the age of 17, his cognitive ability declined. At the age of 18, claimant began receiving special education services for intellectual disability. However, the records prior to the age of 18 do not show a concern regarding intellectual disability. To the contrary, claimant's scores on the various cognitive assessments were scattered across different subtests, which is not consistent with an intellectual disability. A person who suffers from an intellectual disability would typically have stable but deficient performance throughout his or her developmental years; a person would not have such a significant and sudden decline like claimant did between the ages of 17 and 18 years old. The fact that claimant struggled with completion of the assessment in 2022 shows that his intellectual decline at age 18 was likely attributable to his psychiatric diagnoses rather than an intellectual disability.

23. Regarding autism, the records do not indicate claimant was ever given a DSM-5 diagnosis of autism. The only autism related test was the GARS in 2021 following claimant's diagnosis of schizophrenia and bipolar disorder. Even though claimant's score on that screening measure showed autism was "very likely," it is just a screening device and not a formal standardized assessment (like the ADOS-2), so the

results were likely skewed due to claimant's psychiatric diagnoses. The GARS is not sufficient to diagnose a person with autism.

24. Based on the records provided, though claimant does have challenges, the records do not show claimant suffered from an intellectual disability or autism during his developmental years. Although claimant received special education services for intellectual disability at age 18, the eligibility criteria for special education is under Title 5 of the California Code of Regulations, and not the Lanterman Act, which has more stringent criteria for regional center eligibility. Moreover, given the scattered scores on various assessments over the years and the marked decline in claimant's academic performance following his diagnosis with schizophrenia and bipolar disorder, claimant's cognitive decline is likely more attributable to those diagnoses rather than a developmental disability, which presents at an early age and shows consistent deficits over the developmental years. Consequently, claimant is not eligible for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more

independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The Department of Developmental Disabilities (department) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

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

(a) "Developmental Disability" means a disability that is attributable to mental 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. Miller-Sabouhi, and her expert opinion that claimant does not qualify for regional center services was uncontested. The records submitted started primarily in 2018, when claimant was already 14 years old. No IEPs or psychological assessments prior to that age were submitted. Of those that were submitted, claimant was shown to have challenges in school, however, his cognitive abilities did not decline markedly until after he received psychiatric diagnoses of schizophrenia and bipolar disorder in 2021. The 2022 psychological assessment showed claimant had attention problems and refused to participate in many of the measures. Claimant's psychiatric diagnoses clearly had an impact on the results of that assessment, which is what stimulated claimant's school district to recommend special education services to continue under the category of intellectual disability in 2022, a category that had never been used in the past. In fact, during his developmental years, several of the assessments and/or IEPs specifically indicated claimant's difficulties were not due to an intellectual disability; and, as Dr. Miller-Sabouhi explained, a person with an intellectual disability would have consistent deficits over their developmental years; not scattered scores like

those exhibited by claimant on the various cognitive assessments. The evidence did not demonstrate claimant has ever received a DSM-5 diagnosis of intellectual disability.

9. Further, there is no evidence that anyone throughout claimant's developmental history was ever concerned with autism, as he never received a DSM-5 diagnosis of autism. The GARS was administered in 2021, however, that is merely a screening device and at the time it was administered, claimant had already been diagnosed with schizophrenia and bipolar disorder, rendering the results that the probability of autism was "very likely" to be questionable. No further follow-up tests, such as the ADOS-2, were administered.

10. Finally, although claimant's doctor, Jose Ruben Romero San Luis, indicated claimant had a variety of conditions that likely affect his cognitive ability, including Asperger's Syndrome and intellectual disability, the letter provided by claimant's doctor did not contain any formal testing to substantiate either diagnosis. Asperger's Syndrome is also not a qualifying diagnosis for regional center services; it must be a DSM-5 diagnosis of autism.

11. Accordingly, a preponderance of the evidence does not support eligibility for regional center services under any qualifying 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 resulted from autism, intellectual disability, cerebral

palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: January 3, 2023

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.